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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

vs.

LARS FORSSENIUS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

FILED AUGUST 7, 1964

PROBABLE JURISDICTION NOTED OCTOBER 12, 1964

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1

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA, AT RICHMOND**

Civil Action No. 3897

**LARS FORSSENIUS (Hollins Station)
Roanoke, Virginia, Plaintiff,**

v.

**A. M. HARMAN, JR., Pulaski, Virginia; LEVIN NOCK DAVIS,
Richmond, Virginia; HARRY VAUGHAN, Hopewell, Vir-
ginia, Members of the State Board of Elections, and
JAMES E. PETERS, Salem, Virginia, Treasurer of Roa-
noke County, Virginia, Defendants.**

COMPLAINT—Filed February 26, 1964

Plaintiff would show unto the Court that:

I.

This action arises under the Constitution and laws of the United States, to wit: U. S. Constitution Article I, Section 2, Amendment XIV; Amendment XVII; and Amendment XXIV; Title 28, U. S. Code, Section 1331; Title 28, U. S. Code, Section 1343; Title 42, U. S. Code, Section 1983 and Title 42, U. S. Code, Section 1988, as hereinafter more fully appears.

II.

A. Plaintiff not only sues for himself but also on behalf of all other voters similarly situated in the Commonwealth of Virginia, by way of class action under Rule 22 of the Rules of Civil Procedure.

[fol. 2] B. Plaintiff seeks not only injunctive relief, but also alleges an actual controversy exists within the jurisdiction of this court and seeks a declaratory judgment on his rights under Title 28, U. S. Code, Section 2201, and Rule 57 of the Rules of Civil Procedure.

III.

He is the Vice-Chairman of the Young Republican Federation of Virginia, and is a citizen and resident of Roanoke County, Virginia, and has been a registered voter in said County for more than three years. He has not paid his State Capitation Tax for the year 1963, but has for the years 1961 and 1962. As such citizen, resident, and voter, he has an interest in the result of all elections, primary or otherwise, for United States Senator from Virginia, member of the United States House of Representatives from his Congressional District, and for electors for President and Vice-President of the United States. He does not propose to pay the State Capitation Tax for the year 1963 in order to vote in the next forthcoming federal elections and further does not propose to file a certificate of continuing residency, as required by the Acts of Assembly hereinafter referred to, six months prior to the election of a federal officer in order to vote in the next forthcoming federal elections.

Plaintiff is informed and believes, and upon such information and belief states the fact to be, that the Constitution of the United States of America requires that no poll tax may be imposed as a prerequisite to voting in a Federal election and cites the language of U. S. Constitutional Amendment XXIV heretofore passed and effective in January, 1964. Plaintiff further states that this Constitutional provision is adversely affected by the laws of the State of Virginia as hereinafter recited in paragraph IV. [fol. 3] Plaintiff believes that the imposition of the Acts of the Legislature of the State of Virginia in requiring a certificate of continuing residency to be filed six months prior to the election of a federal officer is an unreasonable imposition upon the rights of the plaintiff, and is an effort to deprive the plaintiff of his privilege of voting in federal elections. The said Acts violate the Constitution of the United States of America and said Acts are illegal, unconstitutional and without force of law in the following respects, among others: that they effectively deprive your plaintiff and others in like circumstances of their right to vote in State and Federal elections.

The defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, are members of the State Board of Elections who are charged by Virginia law with the administration and supervision of the exercise of the privilege of franchise in the Commonwealth.

The defendant, James E. Peters is the Treasurer of Roanoke County, Virginia, and as such, on or about February 19, 1964, accepted and filed from voters other than this plaintiff in Roanoke County in accordance with the Acts of Assembly hereinafter mentioned, several Certificates of Continuing Residency as set forth in said Acts of Assembly.

IV.

Amendment XXIV to the Constitution of the United States bans the payment of a poll or any other tax as a prerequisite for voting in federal elections as therein defined. Said amendment became effective in January, 1964. [fol. 4] On November 21, 1963, there were approved as enacted by the General Assembly of Virginia, at special session, to be effective February 18, 1964, certain acts affecting the privilege of franchise in Virginia which are here referred to briefly as follows:

- (a) Acts, 1963 Special Session Chapter 1. (Applicable only to calendar year 1964 only.)
- (b) Acts, 1963 Special Session, Chapter 2. (Applicable to 1964 and subsequent elections.)

A copy of said Acts of Assembly is filed herewith and prayed to be read as a part hereof, as is a copy of Amendment XXIV to the U. S. Constitution.

V.

In brief, said Acts of Assembly require from all persons desiring to vote in Federal elections without the payment of a poll tax as allowed by said Amendment XXIV, the filing of forms as to residence with their local treasurer, and performing certain other acts, none of which is required if poll tax is paid.

4

The registrar under said Acts of Assembly is required to keep separate registration books, one known as Roll of Persons Registered for All Elections, the other known as Roll of Persons Registered for Federal Elections only.

VI.

Plaintiff alleges that said Acts of Assembly establish qualifications for voters in Federal elections, as defined in said Amendment XXIV, different from qualifications requisite for electors for the House of Delegates of Virginia, which is in violation of Article I, Section 2; Amendment XIV, and Amendment XVII of the U. S. Constitution, and an attempted evasion of said Amendment XXIV.

[fol. 5] Plaintiff alleges that defendants under color of said Acts of Assembly cause him to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States, and deprive him of the equal protection of the laws.

Plaintiff alleges that all requirements of the Constitution and laws of Virginia requiring the payment of a poll tax as a prerequisite to voting in an election for the most numerous branch of the General Assembly of Virginia are void as repugnant to said Article I, Section 2; Amendment XVII, and Amendment XXIV, of the Constitution of the United States.

In Consideration Whereof, plaintiff prays:

- (1) That a district court of three judges be convened.
- (2) That said Acts of Assembly, and each part thereof, be declared null and void, and of no force or effect whatsoever as being repugnant to the Constitution of the United States.
- (3) That the defendants, and each of them, their agents and servants be restrained and enjoined by the order of this court, pending the final determination of issues stated herein, and upon such determination be permanently restrained and enjoined, from enforcing, executing or administering the said Acts of Assembly, or doing any act thereunder, including but not exclusively, receiving any result of election, or issuing Certificates of Election, for any Federal election, conducted in whole or in part, under color of said Acts of Assembly.

(4) For general relief and his costs.

H. E. Widener, Jr., Bristol, Virginia; David H. Frackelton, Bristol, Virginia; L. S. Parsons, Jr., [fol. 6] Norfolk, Virginia; J. L. Dillow, Pearisburg, Virginia; John N. Dalton, Radford, Virginia; Bentley Hite, Christiansburg, Virginia, Attorneys for Plaintiff.

[fol. 7]

ATTACHMENT TO COMPLAINT
ACTS OF THE GENERAL ASSEMBLY

CHAPTER 1

An Act to authorize persons, in anticipation of ratification of the 24th Amendment to the Constitution of the United States, to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections to be held in the year 1964 without payment of a poll tax, to prescribe certain duties of the State Board of Elections, and to make an appropriation to the State Board of Elections.

[H 1]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (1) During the calendar year 1964 only and subject to the other provisions of this Act, every resident of Virginia who has been registered to vote prior to December 1, 1963, and who desires to vote during the calendar year 1964 without the payment of poll tax or any other tax, upon the adoption of the proposed 24th Amendment to the Constitution of the United States, in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in the Congress of the United States, may file a certificate of continuing residence in the office of the treasurer of his county or city, which shall be in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

.....
 or
 Subscribed and sworn to before me this
 day of, 19.....

.....
 Notary Public"

Such certificate shall be filed not later than six months prior to the general election held in November, 1964. Every such certificate shall bear the signature of the person offering the same and shall be verified by his affidavit or witnessed by at least one adult. Such certificate shall be conclusive of the facts stated therein, subject only to challenge under the provisions of § 24-253 of the Code.

(2) Such certificate shall be received by the treasurer, dated and marked filed, and upon the ratification of the proposed 24th Amendment to the Constitution of the United States, shall have the same force and effect as certificates of continuing residence filed under the provisions of § 24-17.2 of an Act of the General Assembly enacted at the special session of the General Assembly, 1963.

[fol. 8] (3) The State Board of Elections shall forthwith prepare and distribute to the several county and city treasurers books in which such treasurers shall record the certificates of residence as provided for in this Act. The certificates filed in the office of such treasurer shall be entered on such books alphabetically and by magisterial districts in counties and by wards or other election districts in cities.

2. There is hereby appropriated out of the general fund in the State treasury to the State Board of Elections a sum sufficient estimated at one thousand dollars.

CHAPTER 2

An Act to amend and reenact §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124 of the Code of Virginia, and to amend the Code of Virginia by adding thereto sections numbered 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, all of which amended and new sections relate to registration and voting in State, local and Federal elections, and to the duties of certain election officials; and to make an appropriation to the State Board of Elections.

[H 2]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (a) Pursuant to the mandates of the Constitution of Virginia (including, without limitation, the provisions of Section 6 and Section 36 of the Constitution of Virginia), this Act is passed (1) to enable persons to register and vote in Federal elections without the payment of poll tax or other tax as required by the 24th Amendment to the Constitution of the United States, (2) to continue in effect in all other elections the present registration and voting requirements of the Constitution of Virginia, and (3) to provide methods by which all persons registered to vote in Federal or other elections may prove that they meet the residence requirements of Section 18 of the Constitution of Virginia.

- (b) The right of any citizen of the Commonwealth of Virginia to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress of the United States, or to register to vote in any such primary or such election, shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

2. That §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding §§ 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, the amended and new sections being as follows:

§ 24.17. *Persons entitled to vote at all general elections.*—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, has been duly registered * under the provisions of § 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, and [fol. 9] is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.1. *Persons entitled to vote only at elections for certain Federal officers.*—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, and who has been duly registered under the provisions of § 24-67, but who, at least six months prior to such election in which he offers to vote, has not personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or who has been duly registered under the provisions of § 24-67.1, in either case if he is otherwise qualified under the Con-

stitution and laws of this State, shall be entitled to vote in the following elections and no other: primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.2. Proof of residence required; how furnished.—

(a) No person shall be deemed to have the qualifications of residence required by Section 18 of the Constitution of Virginia and §§ 24-17 and 24-17.1 in any calendar year subsequent to that in which he registered under either § 24-67 or § 24-67.1, and shall not be entitled to vote in any election held in this State during any such subsequent calendar year, unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by personally paying to the proper officer, at least six months prior to any such election in which he offers to vote, all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Proof of continuing residence may only be established by either of such two methods.

(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of _____ (city or county), residing at _____ (street and

number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed: _____

or

Subscribed and sworn to before me this _____ day of _____, 19 _____.

Notary Public"

[fol. 10] Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.

(d) The treasurer shall keep in his office for public inspection, for at least two years after the same are filed, the certificates mentioned in paragraph (b) of this section.

(e) Nothing contained in this or any other section of this Act shall be construed as affecting any of the provisions of Chapters 2.1 and 13.1 of Title 24 of the Code relating to voters in the armed services.

§ 24-28.1. State Board of Elections to furnish certain books and forms; appropriation therefor.—The State Board of Elections shall prepare such books as needed for use in recording the list of persons who have registered without the payment of a poll tax and forms for the filing of certificates of continuing residence and for the transfer of voters. Such books and forms shall be furnished by the Board to the clerks of the circuit courts of the counties and the corporation courts of the cities, to be by them distributed to the registrars and other election officials of their respective election districts. The Board shall as

soon as possible after the effective date of this section, furnish to each registrar in the State at least one of each of such books and forms along with printed instructions as to the purpose of the forms.

The Board shall as soon as possible after the passage of this Act cause to be printed a supplemental compilation of the election laws of this State, which shall include all the provisions of this Act and shall distribute the same to the election officials throughout the State. A sum sufficient not exceeding one thousand dollars is hereby appropriated out of the general fund of the State to the State Board of Elections for the purpose of paying the expenses incurred under this section.

§ 24-67. Who to be registered for all elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, * at the time of the next general election, shall have the qualifications of age and residence in Section 18 of the Constitution of Virginia, and who * has paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

(b) The names of all persons who have been registered under paragraph (a) of this section shall be enrolled in the registration book or type of record in use on the effective date of this Act, which shall be known as "Roll of Persons Registered for All Elections."

(c) Persons registered under paragraph (a) of this section shall be registered to vote in every general, special or primary election held in this State; provided that no person registered under § 24-67.1 shall be deemed registered to vote in any general, special or primary elections except those elections for the offices enumerated in paragraph (c)

of § 24-67.1, until he shall have been registered under paragraph (a) of this § 24-67.

§ 24-67.1. Who to be registered only for Federal elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person [fol. 11] to be registered at the time and in the manner required by law, who, at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, but who has not paid all State poll taxes assessed or assessable against him as required in Section 20 of the Constitution of Virginia and § 24-67.

(b) The names of all persons who have been registered under paragraph (a) of this section, shall not be enrolled in the registration books referred to in § 24-67, but shall be enrolled in a separate registration book or other type of record, which shall be known as "Roll of Persons Registered for Federal Elections Only."

(c) Persons registered under paragraph (a) of this section shall be registered to vote only in primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States, and shall not by virtue of registration under this section be deemed to be registered to vote in any other general, special or primary elections held in this State.

§ 24-78. Lists of persons registered to be posted and certified to clerk.—It shall be the duty of the registrar within five days after each sitting to have posted at three or more public places in his jurisdiction separate written or printed lists of the names of all persons so admitted to registration, under §§ 24-67 and 24-67.1, respectively, and at the same time to also certify to the clerk of the circuit court of the county, or the corporation court of the city a true copy of such lists, and to have * each list posted on the day of the election at each place of voting in his juris-

diction, showing the names of such registrants residing in that precinct.

§ 24-79. *Clerk to record such lists.*—It shall be the duty of the clerk, upon receipt of such lists, to forthwith record in * separate suitable books, to be kept in his office for that purpose, the names of registered voters so certified, in alphabetical arrangement.

§ 24-87.1. *Designation of type of registration in certificate of transfer.*—Whenever any registrar shall issue a certificate of transfer under any provision of this chapter, he shall show on the certificate of transfer whether the person to whom the transfer was issued was registered under the provisions of § 24-67 or § 24-67.1. It shall be the duty of the registrar receiving the transfer, on its appearing to his satisfaction that the person to whom the certificate was issued has resided, prior to the next election, for thirty days in the election district to which he desires to transfer, to enter the name of such person on the registration books or other type of records of that precinct maintained for persons registered under the section shown on the certificate of transfer.

§ 24-119.2. *Applicability of certain sections.*—The provisions of §§ 24-68 through 24-119.1, inclusive, shall be applicable mutatis mutandis to persons registered under the provisions of § 24-67.1.

24-120. *Treasurer to file lists with clerk.*—The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least one hundred and * fifty-eight days before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city (1) a list of all persons in his county or city who have filed certificates of residence under § 24-17.2, and (2) a separate list of all persons in his county or city who have paid not later than six months prior to each of such dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which lists shall state the white

and colored persons separately, *if known*, and shall be verified by the oath of the treasurer. The treasurer shall, in *each* such list, designate as a tribal Indian any person [fol. 12] who requests to be so designated and who shall have furnished the treasurer with an affidavit, made by the Chief of any Indian tribe existing in this State, that such person is a member of such tribe and to the best knowledge and belief of the Chief is a tribal Indian as defined in § 1-14 of the Code of Virginia.

§ 24-121. *Clerk to deliver copies of lists to sheriff or sergeant who shall post same; record of returns.*—The clerk within ten days from the receipt of the lists *filed pursuant to § 24-120* shall make and certify a sufficient number of copies * *of each list*, and shall deliver one copy of *each list* for each voting place in his county or city and one copy of *each list* for each of the registrars in * *his county or city* to the sheriff of * *his county* or sergeant of * *his city*, whose duty it shall be to post one copy of *each list* without delay, and in no event later than five days after receipt thereof, at each of the voting places and to deliver one copy of *each list* to each of the registrars in the county or city and within ten days from the receipt thereof to make return on oath to the clerk as to the places where and dates at which such copies were respectively posted and delivered. The clerk shall record the returns in a book kept in his office for the purpose. However, no failure upon the part of the sheriff or sergeant to deliver a copy of * *such lists or either of them* to any registrar shall operate to invalidate an election.

§ 24-122. *Clerk to retain copies for public inspection.*—The clerk shall keep in his office for public inspection, for at least sixty days after receiving the lists *filed pursuant to § 24-120*, not less than ten certified copies * *of each list*.

§ 24-123. *Correction of lists.*—Within thirty days after the lists * *filed pursuant to § 24-120* have been so posted any person who shall have reason to believe that his name has been improperly omitted from either of such certified lists, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation

court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide. If it be decided that the name was improperly omitted, the judge shall enter an order to that effect and the clerk of the court shall correct the list furnished him by the treasurer accordingly, and deliver a certified copy of such corrected list to the judges of election at the precinct at which such voter is registered. It shall be the duty of the treasurer to revise the lists within ten days after * *they have* been posted as aforesaid and to correct any omissions or clerical or typographical errors.


§ 24-124. *Duty of clerk to deliver lists with poll books, and forward copies to Comptroller.*—The clerk shall deliver, or cause to be delivered, with the poll books at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy * *of each list filed pursuant to § 24-120, and the poll tax list* shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the *poll tax* list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the Comptroller, who shall charge the amount of the poll taxes stated therein to such treasurer, unless previously accounted for.

§ 24-128.1. *Evidence of filing certificate of residence on transfer.*—*In any case where a voter has been transferred from one city or county to another city or county, and has filed the certificate required by § 24-17.2, upon his request it shall be the duty of the treasurer of the county or city, with whom the certificate was filed, to deliver to such person a certificate stating therein that such person filed in his office within the time prescribed by § 24-17.2 [fol. 13] the certificate required by that section. Such certificate of the treasurer when submitted by the person to whom it was issued to the judges of election at the precinct at which he offers to vote shall be conclusive evidence of the facts stated therein for the purpose of voting.*

Any treasurer who shall give a false certificate so as to show that the certificate of residence has been filed six months before any election when in fact it has not been so filed shall be guilty of a misdemeanor. The granting of each false certificate shall constitute a separate offense.

3. Severability Clause.—If any part or parts, section, subsection, sentence, clause or phrase of this act or the application thereof to any person or circumstance is for any reason declared unconstitutional, such decisions shall not affect the validity of the remaining portions of this act which shall remain in force as if such act had been passed with the unconstitutional part or parts, section, subsection, sentence, clause, phrase or such application thereof eliminated; and the General Assembly hereby declares that it would have passed this act if such unconstitutional part or parts, section, subsection, sentence, clause or phrase had not been included herein, or if such application had not been made.

4. Effective Clause.—This Act shall become effective on the date that the 24th Amendment to the Constitution of the United States is ratified pursuant to Article V of the Constitution of the United States and the provisions of Senate Joint Resolution 29 of the Eighty-Seventh Congress of the United States of America at the second session, which Resolution passed the Senate on March 27, 1962, and passed the House of Representatives on August 27, 1962, or such Act shall become effective ninety days after the adjournment of the session of the General Assembly at which it is enacted, whichever shall occur later.



CHAPTER 3

An Act to amend and reenact § 33-3 of the Code of Virginia relating to the chairman of the State Highway Commission.

[H 3]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. That § 33-3 of the Code of Virginia be amended and reenacted as follows:

§ 33-3. The chairman, whose official title shall be State Highway Commissioner, and who may, at the time of his appointment, be a nonresident of Virginia, shall be a practical business man and shall be appointed at large. The State Highway Commissioner, hereinafter in this title sometimes called "the Commissioner", shall devote his entire time and attention to his duties and shall receive such compensation as shall be fixed by the Governor, subject to the approval of the Commission, unless such salary be fixed by the General Assembly in the appropriation act. He shall also be reimbursed for his actual traveling expenses while engaged in the discharge of his duties.

In the event of a vacancy due to the death, retirement, resignation or removal of the State Highway Commissioner, the Governor may appoint an "Acting State Highway Commissioner", until such time as the vacancy may be filled as provided in § 33-1 of the Code of Virginia. Such "Acting State Highway Commissioner" shall have all powers, and perform all duties, of the State Highway Commissioner as provided by law, and shall receive such compensation as may be fixed by the Governor. All acts performed by the Deputy State Highway Commissioner between the time of any such vacancy and the effective date of the appointment of an "Acting State Highway Commissioner" or the State Highway Commissioner appointed to fill such vacancy are hereby validated.

Nothing herein contained shall be construed so as to authorize or empower such "Acting State Highway Commissioner" to serve as a member of the Elizabeth River Tunnel Commission.

2. An emergency exists, and this Act is effective upon passage.

I, George R. Rich, Clerk of the House of Delegates and Keeper of the Rolls of the State, do certify that the session of the General Assembly of the Commonwealth of Virginia, at which the Acts of Assembly herein printed were enacted, adjourned sine die on November twentieth, nineteen hundred sixty-three.

GEORGE R. RICH,
*Clerk of the House of Delegates
and Keeper of the Rolls of the State*

[fol. 15]

ATTACHMENT TO COMPLAINT

S.J. Res. 29.

Eighty-seventh Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on
Wednesday, the tenth day of January,
one thousand nine hundred and sixty-two*

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to the qualifications of electors.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice

President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

"SEC. 2: The Congress shall have power to enforce this article by appropriate legislation."

JOHN W. McCORMACK,
Speaker of the House of Representatives.

CARL HAYDEN,
President of the Senate pro tempore.

I certify that this Joint Resolution originated in the Senate.

FELTON M. JOHNSTON,
Secretary.

[Passed Senate March 27, 1962; passed House August 27, 1962; received by the Office of the Federal Register, NARS, General Services Administration, August 29, 1962]

[fol. 16]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND

Civil Action No. 3898

HORACE E. HENDERSON, McLean, Virginia, Plaintiff,

v.

A. M. HARMAN, JR., Pulaski, Virginia; LEVIN NOCK DAVIS, Richmond, Virginia; HARRY VAUGHAN, Hopewell, Virginia, Members of the State Board of Elections; and L. M. COYNER, Fairfax Courthouse, Virginia, Director of Finance of Fairfax County, Defendants.

COMPLAINT—Filed February 20, 1964

Plaintiff would show unto the Court that:

I.

This action arises under the Constitution and laws of the United States, to wit: U. S. Constitution Article I section 2;

Amendment XIV; Amendment XVII; and Amendment XXIV; Title 28, U. S. Code, Section 1331; Title 28, U. S. Code, Section 1343; Title 42, U. S. Code, Section 1983 and Title 42, U. S. Code, Section 1988, as hereinafter more fully appears.

II.

A. Plaintiff not only sues for himself but also on behalf of all other voters similarly situated in the Commonwealth of Virginia, by way of class action under Rule 22 of the Rules of Civil Procedure.

[fol. 17] B. Plaintiff seeks not only injunctive relief, but also alleges an actual controversy exists within the jurisdiction of this court and seeks a declaratory judgment of his rights under Title 28, U. S. Code, Section 2201, and Rule 57 of the Rules of Civil Procedure.

III.

He is Chairman of the Republican party of Virginia and is a citizen and resident of Fairfax County, Virginia, and has been a registered voter in said County for more than three years. He has paid his State capitation tax for the year 1963 and for more than three years prior to 1963. As such, he has an interest in the result of all elections, primary or otherwise, for United States Senator from Virginia, member of the United States House of Representatives from his Congressional District, and for electors for President and Vice-President of the United States.

Defendants Harman, Davis and Vaughan are the members of the State Board of Elections which is charged by Virginia law with administration and supervision of the exercise of the privilege of franchise in the Commonwealth.

Defendant L. M. Coyner is the Director of Finance of Fairfax County, Virginia. Plaintiff is advised and so alleges that said defendant Coyner has been accepting for filing certificates of continuing residence under the Acts of Assembly passed in Special Session which are hereinafter cited.

IV.

Amendment XXIV to the Constitution of the United States bans the payment of a poll or any other tax as a prerequisite for voting in federal elections as therein defined. Said amendment became effective in January, 1964.

[fol. 18] On November 21, 1963, there were approved as enacted by the General Assembly of Virginia, at special session, to be effective February 18, 1964, certain acts affecting the privilege of franchise in Virginia which are here referred to briefly as follows:

- (a) Acts, 1963 Special Session, Chapter 1. (Applicable only to calendar year 1964 only.)
- (b) Acts, 1963 Special Session, Chapter 2. (Applicable to 1964 and subsequent elections.)

A copy of said Acts of Assembly is filed herewith and prayed to be read as a part hereof, as is a copy of Amendment XXIV to the U. S. Constitution.*

V.

In brief, said Acts of Assembly require from all persons desiring to vote in Federal elections without the payment of a poll tax as allowed by said Amendment XXIV, the filing of forms as to residence with their local treasurer, and performing certain other acts, none of which is required if poll tax is paid.

The registrar under said Acts of Assembly is required to keep separate registration books, one known as Roll of Persons Registered for All Elections, the other known as Roll of Persons Registered for Federal Elections only.

VI.

Plaintiff alleges that said Acts of Assembly establish qualifications for voters in Federal elections, as defined in said Amendment XXIV, different from qualifications requi-

* Said Acts and Amendment are printed as attachments to the Complaint in *Forssenius v. Harman*, No. 3897, and are not reprinted here.

site for electors for the House of Delegates of Virginia, which is in violation of Article I, Section 2; Amendment XIV; and Amendment XVII of the U. S. Constitution, and an attempted evasion of said Amendment XXIV.

[fol. 19] Plaintiff alleges that defendants under color of said Acts of Assembly cause him to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States, and deprive him of the equal protection of the laws.

Plaintiff alleges that all requirements of the Constitution and laws of Virginia requiring the payment of a poll tax as a prerequisite to voting in an election for the most numerous branch of the General Assembly of Virginia are void as repugnant to said Article I, Section 2, Amendment XVII, and Amendment XXIV, of the Constitution of the United States.

In Consideration Whereof, plaintiff prays:

- (1) That a district court of three judges be convened.
- (2) That said Acts of Assembly, and each part thereof, be declared null and void, and of no force or effect whatsoever as being repugnant to the Constitution of the United States.
- (3) That the defendants, and each of them, their agents and servants be restrained and enjoined by the order of this court, pending the final determination of issues stated herein, and upon such determination be permanently restrained and enjoined, from enforcing, executing or administering the said Acts of Assembly, or doing any act thereunder, including but not exclusively, receiving any result of elections or issuing Certificates of Election, for any Federal election, conducted in whole or in part, under color of said Acts of Assembly.
- (4) For general relief and his costs.

H. E. Widener, Jr., Bristol, Virginia; David H. Frackelton, Bristol, Virginia; L. S. Parsons, Jr., [fol. 20] Norfolk, Virginia; J. L. Dillow, Pearisburg, Virginia; John N. Dalton, Radford, Virginia; Bentley Hite, Christiansburg, Virginia, Attorneys for Plaintiff.

[fol. 38] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIUS

v.

A. M. HARMAN, JR., et als.

Civil Action No. 3898

HORACE E. HENDERSON

v.

A. M. HARMAN, JR., et als.

PRE-TRIAL ORDER—March 4, 1964

It is Adjudged and Ordered:

1. These actions are consolidated.
2. The defendants are directed to file their answers, together with such additional pleadings as they may deem proper, on or before March 23, 1964. The filing of answers shall not constitute a waiver of defenses and objections raised by motions.
3. The plaintiffs may file replies, if they deem it advisable, on or before March 30, 1964.
4. No additional motions or pleadings may be filed thereafter except by leave of Court for good cause shown.
5. All proposed exhibits and the names and addresses of all persons who may be called to testify must be filed

[fol. 39] with the Clerk of this Court (in Richmond) twenty days prior to the date of the hearing on the merits. If the exhibits are voluminous, they should be marked by the Clerk at least two days prior to the date of trial. Formal proof of exhibits will be deemed waived unless objected to in writing at least seven days prior to the date of trial. Copies of all exhibits, lists of witnesses and briefs should be mailed to all counsel of record and the members of the Three-Judge Court at their respective addresses.

6. Hearing on all motions, unless otherwise ordered by the Court, will be deferred until the date of the hearing on the merits.

7. Plaintiffs' briefs should be filed on or before April 13, 1964. Defendants' briefs should be filed on or before April 28, 1964. Plaintiffs' reply briefs, if any, should be filed on or before May 5, 1964.

8. This case is set for hearing upon the merits and upon all motions in the United States District Court, Post Office Building, Richmond, Virginia, on Tuesday, May 12, 1964, at 10:00 a.m., Eastern Standard Time.

Let the Clerk send copies of this order to plaintiffs' counsel, the defendants, the Attorney General of Virginia, the Commonwealth Attorney of Fairfax County, Virginia, and the Commonwealth Attorney of Roanoke County, Virginia.

John D. Butzner, Jr., United States District Judge.
March 4, 1964

[fol. 40] Clerk's Return (omitted in printing).

[fol. 48]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIUS

v.

A. M. HARMAN, JR., et als.

ANSWER OF JAMES E. PETERS—Filed March 20, 1964

The answer of James E. Peters, Treasurer of Roanoke County, Virginia, to an action filed against him and others in the above styled cause:

This defendant, James E. Peters, Treasurer of Roanoke County, Virginia, comes and says that he adopts as his defensive pleadings, all present and future pleadings filed and to be filed by the Attorney General of the Commonwealth of Virginia, for and on behalf of the Board of Elections of said Commonwealth of Virginia.

And having thus fully answered, he prays to be hence dismissed.

James E. Peters, Treasurer of Roanoke County,
Virginia, By Edw. H. Richardson, Counsel.

Edw. H. Richardson, Counsel, Salem, Virginia.

Certificate of service (omitted in printing).

[fol. 49]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., et als., Defendants.

MOTION TO STAY PROCEEDINGS—Filed March 23, 1964

Defendants, A. M. Harman, Jr., Levin Nock Davis, and Harry Vaughan, move the Court as follows:

(1) To stay any decision on the merits on the ground that the Complaint seeks a declaration that certain Virginia Statutes are repugnant to the Constitution of the United States and an injunction against enforcement of such Virginia Statutes, prior to any interpretation, construction or determination of constitutionality of such Statutes by the Virginia Courts.

(2) To stay any decision on the merits on the ground that appropriate and effective remedies, such as the declaratory judgment procedure, are provided by Virginia law for the determination by its Courts of the issues raised by the Complaint, and such Courts should be afforded a reasonable opportunity to make such determination.

(3) To stay any decision on the merits on the ground that, in the area of qualifications for voting which has traditionally been reserved to the States, Federal Courts should serve the policy of comity with the States in order to avoid unnecessary interference by the Federal Courts with proper and validly administered State concerns and [fol. 50] unnecessary constitutional adjudications by the Federal Courts.

(4) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint are fairly open to construction or interpretation by the Virginia Courts, which might materially change the nature of the issues presented by the Complaint.

(5) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint, if construed in conjunction with Sections 18 through 38 of the Constitution of Virginia, require determinations by the Virginia Courts that will furnish a guide for future action by this Court.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia;

Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219;

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

[fol. 51] Certificate of Service (omitted in printing).

[fol. 52] In support of this Motion, the Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

Texts:

1 *Barron & Holtzoff, Federal Practice & Procedure*, § 64 (1960), and cases cited.

1 *A Moore's Federal Practice*, ¶ 0.203[1] (2d ed. 1961), and cases cited.

Cases:

Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941);
Spector Motor Co. v. McLaughlin, 323 U.S. 101 (1944);
Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 (1949);
Government & Civic Employees Organizing Comm. v. Windsor, 353 U.S. 364 (1957);
Harrison v. NAACP, 360 U.S. 167 (1959);
Louisiana Power & Light Co. v. Thibodeaux, 360 U.S. 25 (1959);
Martin v. Creasy, 360 U.S. 219 (1959);
Compare McNeese v. Board of Educ., 373 U.S. 668 (1963);
Empire Pictures Distrib. Co. v. City of Fort Worth, 273 F.2d 529 (5th Cir. 1960);
Lassiter v. Taylor, 152 F. Supp. 295 (E.D. N.C. 1957).

[fol. 53] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 At Richmond
 Civil Action No. 3898

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et als., Defendants.

MOTION TO STAY PROCEEDINGS—Filed March 23, 1964

Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, move the Court as follows:

(1) To stay any decision on the merits on the ground that the Complaint seeks a declaration that certain Virginia Statutes are repugnant to the Constitution of the United States and an injunction against enforcement of such Virginia Statutes, prior to any interpretation, construction or determination of constitutionality of such Statutes by the Virginia Courts.

(2) To stay any decision on the merits on the ground that appropriate and effective remedies, such as the declaratory judgment procedure, are provided by Virginia law for the determination by its Courts of the issues raised by the Complaint, and such Courts should be afforded a reasonable opportunity to make such determination.

(3) To stay any decision on the merits on the ground that, in the area of qualifications for voting which has traditionally been reserved to the States, Federal Courts should serve the policy of comity with the States in order to avoid unnecessary interference by the Federal Courts [fol. 54] with proper and validly administered State concerns and unnecessary constitutional adjudications by the Federal Courts.

(4) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint are fairly open to construction or interpretation by the Virginia Courts, which might materially change the nature of the issues presented by the Complaint.

(5) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint, if construed in conjunction with Sections 18 through 38 of the Constitution of Virginia, require determinations by the Virginia Courts that will furnish a guide for future action by this Court.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock^d Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia;

Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219;

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

[fol. 55] Certificate of Service (omitted in printing).

[fol. 56] In support of this Motion, the Defendants, A. M. Harman, Jr., Levin Noek Davis and Harry Vaughan, intend to rely upon the following authorities:

Texts:

- 1 *Barron & Holtzoff, Federal Practice & Procedure*, § 64 (1960), and cases cited.
- 1 *A Moore's Federal Practice*, ¶ 0.203[1] (2d ed. 1961), and cases cited.

Cases:

- Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941);
Spector Motor Co. v. McLaughlin, 323 U.S. 101 (1944);
Stainback v. Ho, Hock Ke Lok Po, 336 U.S. 368 (1949);
Government & Civic Employees Organizing Comm. v. Windsor, 353 U.S. 364 (1957);
Harrison v. NAACP, 360 U.S. 167 (1959);
Louisiana Power & Light Co. v. Thibodeaux, 360 U.S. 25 (1959);
Martin v. Creasy, 360 U.S. 219 (1959);
Compare McNeese v. Board of Educ., 373 U.S. 668 (1963);
Empire Pictures Distrib. Co. v. City of Fort Worth, 273 F.2d 529 (5th Cir. 1960);
Lassiter v. Taylor, 152 F. Supp. 295 (E.D. N.C. 1957).

[fol. 57]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., et als., Defendants.

MOTION TO DISMISS—Filed March 23, 1964.

Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, move the Court as follows: /

(1) To dismiss the action on the ground that the Electoral Board of Roanoke County, Virginia, the Clerk of the Circuit Court of Roanoke County, Virginia, and the Registrars of Roanoke County, Virginia, are charged by the Constitution and laws of Virginia with the duties of administering the registration of voters and conducting elections, and therefore, are indispensable parties not within the jurisdiction of this Court and without whom the relief prayed for in the Complaint cannot be granted.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Róbert Y. Button, Attorney General of Virginia;

Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219.

[fol. 58] Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 58a] In support of this Motion, the defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

Constitutional Provisions:

Constitution of Virginia, Sections 20, 31 and 38.

Statutory Provisions:

Title 24 of the Code of Virginia, 1950, as amended by the Acts of the 1963 Extra Session of the General Assembly of Virginia, Chapters 4, 5, 6 and 7.

Federal Rules of Civil Procedure:

Rule 12.

Cases:

Jeffers v. Whitley, 165 F. Supp. 951 (N.D. N.C. 1958).
Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

[fol. 59]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3898

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET ALS., Defendants.

MOTION TO DISMISS—Filed March 23, 1964

Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, move the Court as follows:

(1) To dismiss the action because the Complaint fails to state a claim against defendants upon which relief can be granted in that it appears upon the face of the Complaint that the plaintiff is duly registered and entitled to vote in all State and Federal elections to be held in Virginia, and that, therefore, the Virginia Statutes referred to in the Complaint do not affect the plaintiff adversely in any manner or threaten him with immediate harm.

(2) To dismiss the action on the ground that the Court lacks jurisdiction because the Complaint presents no actual or justiciable case or controversy within the meaning of 28 U.S.C. § 2201 insofar as the plaintiff and other persons similarly situated are concerned.

(3) To dismiss the action on the ground that the Electoral Board of Fairfax County, Virginia, the Clerk of the Circuit Court of Fairfax County, Virginia, and the General Registrar of Fairfax County, Virginia, are charged by [fol. 60] the Constitution and laws of Virginia with the duties of administering the registration of voters and conducting elections, and therefore, are indispensable parties not within the jurisdiction of this Court and without whom the relief prayed for in the Complaint cannot be granted.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia, Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219.

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 62] In support of this Motion, the defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

*Constitutional Provisions:**Constitution of the United States*, Article III, § 2.*Constitution of Virginia*, Sections 20, 31 and 38.*Statutory Provisions:*

28 U.S.C., § 2201 (1958).

Title 24 of the Code of Virginia, 1950, as amended by the Acts of the 1963 Extra Session of the General Assembly of Virginia, Chapters 4, 5, 6 and 7.

Federal Rules of Civil Procedure:

Rule 12

Rule 57

*Texts:*6 *Moore's Federal Practice*, ¶ 57.11 (2d ed. 1953), and cases cited.3 *Barron & Holtzoff, Federal Practice & Procedure*, §§ 1263-64 (1958), and cases cited.*Cases:**Poe v. Ullman*, 367 U.S. 497 (1961).*Alabama State Fed'n. of Labor v. McAdery*, 325 U.S. 450 (1945).*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936).*Tyler v. Judges of Court of Registration*, 179 U.S. 405 (1900).*Marje v. Parsons*, 114 U.S. 325 (1885).*Bryant v. Rucker*, 111 F.Supp. 309 (S.D. Ala. 1953).*Jeffers v. Whitley*, 165 F.Supp. 951 (M.D. N.C. 1958).*Covington v. Edwards*, 264 F.2d 780 (4th Cir. 1959).

[fol. 63]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., ET AL., Defendants.

ANSWER OF THE DEFENDANTS, A. M. HARMAN, JR., LEVIN
NOCK DAVIS and HARRY VAUGHAN—Filed March 23, 1964

First Defense

The Complaint fails to state a claim against Defendants upon which relief can be granted.

Second Defense

(1) The defendants admit that this Court has jurisdiction under 18 U.S.C. §1343, but deny that this action arises under the particular articles, amendments or sections of the Constitution and laws of the United States cited in paragraph I.

(2) The defendants deny the averments of paragraph II A.

(3) The defendants deny that an actual controversy exists or the plaintiff is entitled to a declaratory judgment or an injunction under 28 U.S.C. §2201 and Rule 57 of the Rules of Civil Procedure as averred in paragraph II B. Further, the defendants aver that the remainder of paragraph II B does not require an answer.

(4) The defendants are without information sufficient to form a belief as to the truth of the averments in the first unnumbered subparagraph in paragraph III.

[fol. 64] (5) The defendants aver that Amendment XXIV of the Constitution of the United States speaks for itself, and therefore the first averment of the second unnumbered subparagraph in paragraph III does not require an answer; the defendants deny the remaining averments in such subparagraph.

(6) The defendants deny the averments and conclusions in the third unnumbered subparagraph in paragraph III.

(7) The defendants deny the averments in the fourth unnumbered subparagraph of paragraph III.

(8) The defendants admit the averments in the fifth unnumbered subparagraph in paragraph III.

(9) The defendants aver that Amendment XXIV to the Constitution of the United States and the Acts of Assembly speak for themselves and therefore the averments of paragraph IV do not require an answer.

(10) The defendants aver that the Acts of Assembly speak for themselves and therefore the averments of paragraph V do not require an answer.

(11) The defendants deny the averments of paragraph VI.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

[fol. 65] Robert Y. Button, Attorney General of Virginia, Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219.

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 66]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Action No. 3898

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET ALS., Defendants.

ANSWER OF THE DEFENDANTS, A. M. HARMAN, JR., LEVIN
NOCK DAVIS and HARRY VAUGHAN—Filed March 23, 1964.

First Defense

The Complaint fails to state a claim against Defendants upon which relief can be granted.

Second Defense

(1) The defendants admit that this Court has jurisdiction under 18 U.S.C. §1343, but deny that this action arises under the particular articles, amendments or sections of the Constitution and laws of the United States cited in paragraph I.

(2) The defendants deny the averments of paragraph II A.

(3) The defendants deny that an actual controversy exists or the plaintiff is entitled to a declaratory judgment or an injunction under 28 U.S.C. §2201 and Rule 57 of the Rules of Civil Procedure as averred in paragraph II B. Further, the defendants aver that the remainder of paragraph II B does not require an answer.

(4) The defendants are without information sufficient to form a belief as to the truth of the averments in the first [fol.67] unnumbered subparagraph in paragraph III.

(5) The defendants deny the averments in the second unnumbered subparagraph of paragraph III.

(6) The defendants admit the averments in the third unnumbered subparagraph in paragraph III.

(7) The defendants aver that Amendment XXIV to the Constitution of the United States and the Acts of Assembly speak for themselves and therefore the averments of paragraph IV do not require an answer.

(8) The defendants aver that the Acts of Assembly speak for themselves and therefore the averments of paragraph V do not require an answer.

(9) The defendants deny the averments of paragraph VI.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia, Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219.

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212.

[fol. 68] Certificate of Service (omitted in printing).

[fol. 69]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk and Richmond Divisions

Civil Action No. 4460

Civil Action No. 3897

Civil Action No. 3898

(as consolidated) Richmond Division

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET ALS., Defendants.

ANSWER—Filed March 23, 1964

The answer of Lewis M. Coyner, Director of Finance of Fairfax County, Virginia to an action filed against him and others in the above styled cause:

This Defendant, Lewis M. Coyner, Director of Finance of Fairfax County, Virginia, comes and says that he adopts as his defense pleadings all present and future pleadings filed and to be filed by the Attorney General of the Commonwealth of Virginia for and on behalf of the Board of Elections of the said Commonwealth of Virginia.

And having thus fully answered, he prays to be thus dismissed with costs to Plaintiff.

Lewis M. Coyner, Director of Finance, Fairfax County, Virginia, By Ralph G. Louk, Counsel.

Ralph G. Louk, Commonwealth's Attorney, Fairfax County, Virginia, Counsel for Defendant.

Certificate of Service (omitted in printing).

[fol. 70]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Actions Nos. 3897 and 3898

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., ET AL., Defendants,

and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET AL., Defendants.

STIPULATION—Filed May 12, 1964 ✓

Come the plaintiffs and defendants, by counsel, and stipulate the following facts:

I.

Lars Forssenius is a duly registered voter in Burlington Precinct, Roanoke County, Virginia, having been registered February 8, 1963.

He is registered on the registration books for all elections, and is not registered on the registration books for federal elections only.

II.

Forssenius has not paid his poll tax for 1963.

[fol. 71]

III.

Forssenius has not filed a certificate of continuing residence.

IV.

Forssenius is a Vice-Chairman of the Young Republican Federation of Virginia.

V.

Horace E. Henderson is the Chairman of the Republican State Central Committee.

VI.

Henderson is now and has been for more than one year previous to the commencement of this suit a duly registered voter in Fairfax County, Virginia.

He is registered on the registration books for all elections and is not registered on the registration books for federal elections only.

VII.

Henderson has paid his poll taxes for 1961, 1962 and 1963.

VIII.

Henderson has not filed a certificate of continuing residence.

This 12 day of May, 1964.

H. E. Widener, Jr., Of Counsel for Plaintiffs,
— Richard N. Harris, Of Counsel for Defendants.

[fol. 72]

[File endorsement omitted]

[Handwritten notation—I Concur—Walter E. Hoffman,
U.S.D.J.—John D. Butzner, Jr., U.S.D.J.]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT RICHMOND

Civil Actions Nos. 3897 and 3898

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants,
and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants.

(Argued May 12, 1964)

OPINION—May 29, 1964

Before Bryan, Circuit Judge, and Hoffman and Butzner,
District Judges.

H. E. Widener, Jr., Esqui Bristol, Virginia; David H. Frackelton, Esquire, Bristol, Virginia; L. S. Parsons, Jr., Esquire, Norfolk, Virginia; J. L. Dillow, Esquire, Pearisburg, Virginia; John N. Dalton, Esquire, Radford, Virginia; Bentley Hite, Esquire, Christiansburg, Virginia, attorneys for the plaintiffs.

Robert Y. Button, Esquire, Attorney General of Virginia; Richard N. Harris, Esquire, Assistant Attorney General of Virginia; E. Milton Farley, III, Esquire, Richmond, Virginia; Joseph C. Carter, Jr., Esquire, Richmond, Virginia; Edward H. Richardson, Esquire, Commonwealth's Attorney of Roanoke County, Salem, Virginia; Ralph G.

Louck, Esquire, Commonwealth's Attorney of Fairfax County, Fairfax, Virginia, attorneys for the defendants.

[fol. 73] Albert V. Bryan, Circuit Judge:

Since the adoption of the 24th Amendment forbidding exaction of a poll tax as a prerequisite to voting in a Federal election,* Virginia has enacted an additional qualification for the Federal voter. If he has not paid the poll tax still required in State elections, he must file within the same time a certificate of continuing residence. No such certificate is demanded of a voter in an election for the Virginia House of Delegates. By Article I, Section 2 and by the 17th Amendment of the United States Constitution, it is ordained that electors choosing a Representative or Senator in Congress "shall have the qualifications requisite for electors of the most numerous branch [the House of Delegates] of the State Legislature(s)". Thus, the Virginia statutes—1963 Acts—imposing the extra test upon the Federal elector contravenes, as this suit now asserts, these constitutional provisions.

The plaintiffs further assert that the ultimate effect of the 24th Amendment is to rescind the power of the State to insist upon the payment of a poll tax as a condition for voting in the election of members of the House of Delegates. We do not agree.

These propositions were posed by the two complaints here, one of Lars Forssenius and the other of Horace E. Henderson, both citizens of the United States and of the State of Virginia having the requisite residence to vote, and each suing for himself and others as a class similarly [fol. 74] situated. The suits have been consolidated and are now treated as a single cause.

The 1963 Acts were adopted at an extra session of the Virginia Legislature in anticipation of the promulgation of the 24th Amendment, which occurred February 4, 1964. Prior thereto, the Constitution of Virginia, in Article II,

* An election for a State or local office we shall term a State election and a voter therein a State elector; an election for a Federal office will be a Federal election, and a voter therein a Federal elector.

and the statutes of the State, Code §§ 24-67 and 24-17, provided for the registration and voting of electors in all elections, both Federal and State, primary and general. In brief, the requirements were: age of not less than 21 years, residence within the State for one year and of the city or county six months and the payment "at least six months prior to the election . . . to the proper official all State poll taxes [\$1.50 annually] assessed or assessable against him for three years next preceding such election". Registration is required only once. Each election year, however, there is compiled a new list of poll taxes paid.

Amendment 24, so far as pertinent, provides in § 1:

" . . . The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax".

Obviously, the effect of this amendment was to annul in Virginia's Constitution and statutes payment of a poll tax as a condition for registering and voting in primary and general Federal elections. *Guinn v. United States*, 238 U.S. 347, 362 (1915); *Ex parte Yarbrough*, 110 U.S. 651, 655 (1884).

The 1963 Acts directed a division of the registration and voting qualification record into two classes, one for Federal elections and another for State elections. For this purpose Code § 24-67 providing for registration, and § 24-17 for voting, were each amended and enlarged. No change [fol. 75] was made with regard to State elections. The changes inserted for participation in Federal elections were twofold: (1) the withdrawal of the poll tax payment both for registration and for voting, and (2) the addition for voting of this requirement in Code § 24-17.2, set out in part below:

"Proof of residence required; how furnished.—

(a) No person shall be deemed to have the qualifications of residence required . . . [by the Constitution

and statutes of Virginia] in any calendar year subsequent to that in which he registered . . . and [he] shall not be entitled to vote in this State [in any Federal election] . . . unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by . . . [payment of the customary poll taxes]. Proof of continuing residence may only be established by either of such two methods.

“(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

‘I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed: _____

or

Subscribed and sworn to before me this day of
....., 19....

Notary Public’

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his [fol. 76] affidavit or witnessed by at least one adult.

"(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253."

As a result of the new statutes a citizen after registration may vote in both Federal and State elections if he has satisfied the assessable poll tax; if he has not paid the tax he cannot vote in any State election but he may vote in a Federal election upon filing the certificate of residence.

I. The pivotal point before us is whether or not the certificate of residence is simply an instrument evidencing residence, that is, merely proof of the residence qualification; or a separate qualification put upon the Federal voter, or at least an enlargement of the residence qualification, which in either event is not placed on the State voter. Concededly, residence is a qualification properly required for both Federal and State suffrage. *Lassiter v. Northampton Election Bd.*, 360 U.S. 45, 51 (1959).

In this determination, we reject the abstention argument pressed by the defendants: that the significance of the certificate and its character as used in the 1963 Acts is a State question, and we should stay our hand until the courts of Virginia are afforded the opportunity to interpret the term. Whether a requirement of State law constitutes a discrimination against the Federal voter, either by a separate or a disproportionate qualification, within the meaning of Article I, Section 2 and the 17th Amendment of the Federal Constitution is immediately a Federal question. No matter the careful and scrupulous study of the State courts, the determination is one manifestly within the framework of the Federal Constitution and so must be the decision of the Federal court. In *Ex parte Yarbrough*, [fol. 77] *supra*, 110 U.S. 651, 663 the Court said:

"But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

"The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures,

do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the *same* persons shall vote for members of Congress in that State". (Accent added.)

Because of the 1963 Acts, with the poll tax removed from Federal elections, the electors in the two elections do not enjoy equal eligibility. The Federal elector must file a witnessed or notarized certificate of residence, not only declaring himself a current resident of Virginia, but also that he has been a resident since his registration. After giving the street number of his residence, he must give assurance of his intention not to remove from the city or county prior to the next general election.

On the other hand, remittance of the poll tax by the State elector need not be accompanied by any express representation whatsoever of present residence. No affirmative proof has to be adduced that it has continued uninterrupted since his original registration. Thus the State elector's residency is accepted as unbroken from the date of his registration. No such presumption is accorded the Federal voter. A positive and yearly renewed guarantee of residence is necessary for casting a Federal vote. True, a State elector may be challenged at the polls for insufficient residence, but this is a rare and optional practice.

These differences, while denied by the defendants, are urged as a distinction only in the means of proof of residence and are said not to be a variance in qualifications. The argument is that the poll tax payment requires all that the certificate requires. This view cannot stand against the obvious fact that the payment of the poll tax does not entail a procedure which is trustworthy in vouching residence. That the tax payment will be accepted in satisfaction of residential requirements even in a Federal election, despite its almost total deficiency as evidence of residence, reveals the certificate as an independent or superadded qualification.

We think the 1963 Acts do add a distinct qualification. The excess of exactions in themselves constitute a special qualification. But whether the 1963 Acts delineate another qualification or merely increase the quantum of necessary proof of residence, they unreasonably burden the duty of the Federal elector beyond that of the voter for the House of Delegates. This overburden, if not itself a separate qualification, is an increased qualification. The extra obligation offends the Federal Constitution by tasking the voter in an election for President, Vice President and Congress beyond what is asked of the elector in the choice of members of the House of Delegates. Art. I, § 2 and 17th Amendment.

Contra, we are cited to *Southerland v. Norris*, 74 Md. 326, 22 Atl. 137 (1891), and *Pope v. Williams*, 56 Atl. 543, (Md. 1903), *aff'd*, 193 U.S. 621 (1904). These cases sustained Maryland statutes treating with removal of persons from the State, their return and the entry of new residents. They sought proof of resumption or inception of residence. But after the voter became qualified generally, neither case is authority for saddling a voter in a Federal election, in order to maintain his status, with a step or task beyond that required of a voter in a State election.

II. For non-joinder of indispensable parties the defendants move the dismissal of this action. The argument is [fol. 79] that as the local electoral board, the registrars and clerks of court are the officers charged with the responsibility for the conduct of elections, no such declaratory or injunctive decree as prayed in the complaint would be effective in the absence of these officers. Only the State Board of Elections and the appropriate treasurer are named defendants. The proposition is unsound.

Poll taxes are paid to, and certificates of residence are filed with, the treasurer. He certifies to the election officials the lists of poll taxes paid and certificates filed. The Board prescribes and furnishes the certificates. Without the acts of these officers no election could proceed. They are sufficient parties for the aims of this suit.

III. Plaintiffs construe the 24th Amendment as erasing payment of poll taxes as a prerequisite to voting for mem-

bers of the Virginia House of Delegates. We do not follow the reasoning of the plaintiffs to this end, and certainly do not subscribe to the conclusion. The legislative history of the joint resolution of the Congress eventuating in the 24th Amendment reveals beyond peradventure that the Amendment was not intended to outlaw poll taxes in any election other than a primary or general Federal election. House Report No. 1821, June 13, 1962, U.S. Code Cong. & Ad. News 4033, 4037, 87th Cong., 2d Sess. (1962). The very phraseology of the Amendment precludes any other interpretation. If the Congress had intended to illegalize the poll tax in all elections, it would have so declared in the 24th Amendment, as it did in the 15th and 19th, where comprehension of all elections was accomplished quite simply by omission of any designation of the elections affected. For the 24th Amendment an explicit designation was included as a limitation of its force to those elections named. [fol. 80] Furthermore, the poll tax as a condition to the exercise of the franchise in State elections has been constantly upheld. *Breedlove v. Suttles*, 302 U.S. 277 (1937); *Saunders v. Wilkins*, 152 F.2d 235, 237 (4 Cir. 1945), *cert. denied*, 328 U.S. 870 (1946); *Butler v. Thompson*, 97 F.Supp. 17 (E.D.Va. 1951), *aff'd per curiam*, 341 U.S. 937. Indeed, the very fact that the Congress deemed a constitutional amendment necessary to abolish it in Federal elections demonstrates that such a tax is not in itself unconstitutional.

IV. That the Constitution of the United States requires the restraint upon the State which we now enforce, and the reason for it, are declared in that great commentary, the *Federalist*, No. 52, in this way:

"... I shall begin with the House of Representatives.

"The first view to be taken of this part of the government relates to the qualifications of the electors and the elected.

"Those of the former are to be the same with those of the electors of the most numerous branch of the state legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article

of republican government. It was incumbent on the convention therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. . . . It must be satisfactory to every State because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the right secured to them by the federal Constitution."

An order will be entered declaring invalid, for the reasons stated, so much of the 1963 Acts—Chapters 1 and 2, [fol. 81] approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963—as requires the filing of a certificate of continuing residence six months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, and enjoining the defendants, their agents, servants and employees from requiring compliance with this part of the Acts.

The order will be suspended, however, for 30 days to allow the defendants, if they be so advised, to appeal to the Supreme Court of the United States, but the suspension shall thereafter cease unless the Supreme Court, or one of the Justices thereof, shall in the interval enlarge the suspension. No bond shall be required of the defendants to perfect the appeal or to obtain the suspension.

[fol. 82]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 At Richmond
 Civil Actions Nos. 3897 and 3898

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants,

and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants.

FINAL ORDER—May 29, 1964

Upon consideration of the pleadings, the stipulations of the parties, as well as the exhibits offered in evidence, and the argument of counsel thereon, the Court declares, for the reasons stated in its opinion this day filed, that the portions of Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963, which require the filing of a certificate of continuing residence six (6) months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, are invalid because in violation of the Constitution of the United States; and accordingly it is

[fol. 83] Adjudged, Ordered and Decreed that the defendants herein, their agents, servants and employees be, and each of them is hereby, restrained and enjoined from requiring compliance by an elector with the said part of the said Acts of the General Assembly.

It is further Ordered that the effectiveness and execution of the foregoing restraint and injunction be suspended for a period of 30 days from this date to allow the defendants, if they be so advised, to seek a further stay of this order from the Supreme Court, or one of the Justices thereof, during the pendency of any appeal therefrom, and this suspension is allowed without bond but shall cease upon the expiration of the said 30-day period unless it is enlarged as aforesaid upon appeal.

Albert V. Bryan, United States Circuit Judge;
Walter E. Hoffman, United States District Judge;
John D. Butzner, Jr., United States District Judge.

May 29th, 1964.

[fol. 84]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Actions Nos. 3897 and 3898

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants,

and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed June 11, 1964

I. Notice is hereby given that A. M. Harman, Jr., Member, State Board of Elections; Levin Nock Davis, Secretary and Member, State Board of Elections; Harry

Vaughan, Member, State Board of Elections; L. M. Coyner, Director of Finance of Fairfax County, Virginia; and James E. Peters, Treasurer of Roanoke County, Virginia, the defendants in the above styled consolidated cases, hereby appeal to the Supreme Court of the United States from the Final Order entered in these suits on May 29, 1964.

This appeal is taken pursuant to 28 U.S.C. § 1253.

[fol. 85] II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The Complaints in both cases.
2. The Pre-Trial Order entered on March 4, 1964.
3. The Motions To Stay Proceedings in both cases.
4. The Motions To Dismiss in both cases.
5. The Answers in both cases of the defendants, Harman, Davis and Vaughan.
6. The Answer of the defendant Peters in Civil Action No. 3897.
7. The Answer of the defendant Coyner in Civil Action No. 3898.
8. The Opinion of the three-judge District Court filed herein on May 29, 1964.
9. The Final Order of the three-judge District Court entered herein on May 29, 1964.
10. All of the following exhibits filed by the defendants: Exhibits Nos. 1 through 41, inclusive.
11. The Stipulation of counsel.
12. This Notice of Appeal.

III. The following questions are presented by this appeal:

1. Did the three-judge District Court err in refusing to stay the proceedings in both cases on the grounds, or any

of them, set forth in the defendants' Motions To Stay Proceedings?

[fol. 86] 2. Did the three-judge District Court err in refusing to dismiss the Complaints, or either of them, on the grounds, or any of them, set forth in the defendants' Motions To Dismiss?

3. Did the three-judge District Court err in declaring invalid because in violation of Article 1, Section 2, and the 17th Amendment of the Constitution of the United States those portions of Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of Virginia, Extra Session 1963, which may require the filing of a certificate of continuing residence six (6) months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress?

4. Did the three-judge District Court err in restraining and enjoining the defendants from requiring compliance by an elector with those portions of the Acts of the General Assembly of Virginia, Extra Session 1963, declared to be unconstitutional?

Richard N. Harris, Assistant Attorney General;
Joseph C. Carter, Jr., Special Counsel.

Robert Y. Burton, Attorney General of Virginia; Richard N. Harris, Assistant Attorney General; Supreme Court Building, Richmond, Virginia 23219;

[fol. 87] Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212;

Attorneys for Appellants.

Proof of Service (omitted in printing)

[fol. 91]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 1

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 19

December 19, 1963

IMPORTANT
READ CAREFULLY

MEMO TO MEMBERS OF ELECTORAL BOARD

Gentlemen:

The special session of the General Assembly which met on November 19, 1963, passed a number of amendments and new sections to the election laws pertaining to registration, etc. They directed this Board to have a supplement printed to the Election Laws containing all of the changes made at said session and to distribute same to the election officials throughout the State. Accordingly, you will find a copy of same enclosed for your information and guidance. A copy of the supplement has been mailed to your general registrar.

It is requested that particular notice be taken of the note on the face of the supplement. *CHAPTER I*, which pertains to the certificate of residence which a person may file with the treasurer during the calendar year 1964 in order to vote in Federal elections without the payment of the capitation tax, *becomes effective on February 19, 1964.*

CHAPTER II contains amended and new sections of the Election Laws relative to registration and voting in State, local and Federal elections, and to the duties of certain election officials. This chapter *does not become effective until the 24th Amendment to the United States Constitu-*

tion is ratified. Therefore, the registrars will continue to register applicants just as they have been doing until they receive written instructions from this office to do otherwise.

With kindest personal regards and best wishes, I am

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

LND/c
Enclosure

"Courtesy Makes Driving Safer"

[fol. 92]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 2

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 19

March 9, 1964

MEMO TO THE CLERK OF THE COURT

Dear Sir:

Due to the ratification of the 24th Amendment to the constitution of the United States, it was necessary to make several changes in the Election Laws of Virginia pertaining mainly to registration procedures.

Shortly before the changes became effective on February 19 we sent a supply of the new forms and a letter of instructions to your general registrar. Since you will probably have a number of inquiries concerning the changes,

I am enclosing herewith a copy of the letter of instructions and a set of the forms for your information. I am also enclosing a supply of the Certificate of Continuing Residence Forms for your use in supplying persons who may request them.

With best wishes, I remain

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

LND/c
Enclosures

[fol. 93]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 3

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 19

December 19, 1963

MEMO TO THE TREASURERS

Gentlemen:

The special session of the General Assembly which convened on November 19, 1963, passed a number of amendments and new sections to the election laws pertaining to registration, resident certificates, etc. They directed this Board to have a supplement printed to the Election Laws containing all of the changes made at said session and to

distribute them to the election officials throughout the State. Accordingly, you will find a copy of same enclosed for your information and guidance.

It is requested that particular notice be taken of the note on the face of the supplement. *CHAPTER I*, which pertains to the certificate of residence which a person may file with you during the calendar year 1964 in order to vote in Federal elections without the payment of the capitation tax, *becomes effective on February 19, 1964*. We are in the process of preparing the certificate forms and the books to be used in recording the certificates of residence which the General Assembly directed this Board to furnish the treasurers. We hope to have them in your hands before the law becomes effective on February 19, 1964.

CHAPTER II contains amended and new sections of the Election Laws relative to registration and voting in State, local and Federal elections, and to the duties of certain election officials. This chapter *does not become effective until the 24th Amendment to the United States Constitution is ratified*.

With kindest personal regards and best wishes, I am

Very truly yours,

STATE BOARD OF ELECTIONS
/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

LND/c
Enclosure

[fol. 94]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 4

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
ROOM 30, STATE CAPITOL
RICHMOND 19

February 10, 1964

MEMO TO THE TREASURER

Dear Sir:

The November 1963 Special Session of the General Assembly passed Acts authorizing persons to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections without the payment of a poll tax.

In order that the requirements of the Acts could be carried out, the General Assembly directed this Board to prepare and distribute to the county and city treasurers such books as needed for use in recording the certificates of residence and under Section 24-28.1 this Board was also directed to prepare the necessary forms for the filing of certificates of residence.

Accordingly, we have prepared the material as directed and you will find enclosed a supply of the Certificate of Residence Forms and a book to be used in recording the certificates.

As set out under the new law, the certificates shall be received by the treasurer, dated and marked filed, and shall be recorded in the enclosed book alphabetically and by magisterial districts in counties and by wards or other election districts in cities. This law becomes effective on the 19th day of February, 1964, and any certificates received after that date should be processed as set out above.

May I call your attention to the fact that the General Assembly also amended Sections 24-120, 24-123 and added Section 24-128.1. These are sections which I am sure you will want to study since they deal with duties required of you as treasurer.

Please feel free to call on me if I can be of further assistance in this matter.

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Enclosures

Vol. 95]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 5

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 19

March 5, 1964

MEMO TO THE TREASURER

Dear Sir:

According to the letters and calls I am receiving, there seems to be still some confusion concerning the qualifications for a person to vote in **FEDERAL ELECTIONS ONLY** this year without the payment of the capitation tax. You will find enclosed a copy of the letter of instructions which this office issued to the registrars concerning this matter as the thought has occurred to me that this information might be of some help also to the treasurers.

In reading the letter of instructions you will observe that the whole procedure so far as the treasurers are concerned boils down to one point. During the year 1964 the only person who will be required to file the Certificate of Continuing Residence in order to vote in the 1964 Federal elections without the payment of the capitation tax will be the person who is presently registered to vote in all elections who decides not to pay the tax to vote in 1964 but who files the Certificate instead on or before May 2, 1964 with the treasurer.

Please feel free to call upon me if I can be of further assistance in the matter.

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Enclosure

"Courtesy Makes Driving Safer"

[fol. 96]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 6

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
ROOM 30, STATE CAPITOL
RICHMOND 19

February 14, 1964

MEMO TO THE GENERAL REGISTRAR

Dear Registrar:

Due to the ratification of the 24th Amendment to the Constitution of the United States, several changes have been made in the method of registering voters in Virginia.

Therefore, this letter of instructions and the forms are being sent to you as directed by the General Assembly of Virginia at its Special Session held in November 1963. You will find this directive and the changes in the law in the Supplement to the Election Laws which we furnished you in December. In studying the changes you will note there will be two methods of registering persons in the future.

FIRST—PERSONS REGISTERING TO VOTE IN ALL ELECTIONS—SECTION 24-67

A person who applies to you for registration to vote in all elections who has met the age, resident, and capitation tax requirements will be registered just as you have done in the past and his name will be entered on the registration record you presently are using which contains the names of the persons who have previously registered and still meet the registration requirements under this section. This record will be known as the *ROLL OF PERSONS REGISTERED FOR ALL ELECTIONS*.

SECOND—PERSONS REGISTERING TO VOTE IN FEDERAL ELECTIONS ONLY—SECTION 24-67.1

The name of the person who applies to you to register for **FEDERAL ELECTIONS ONLY**, who has met the resident and age qualifications, but who has not paid all State poll taxes assessed or assessable against him, should be entered in a separate registration record or system known as *ROLL OF PERSONS REGISTERED FOR FEDERAL ELECTIONS ONLY*. This person does not have to file a certificate of continuing residence in this his year of registration since that in itself is proof of his residence for that year.

Since most cities and counties having general registrars have set up individual systems, I have no way of knowing just how you keep your records. However, I want to strongly impress upon you that I definitely feel that it is the intent of the law for two separate records to be kept. I have discussed this matter with Honorable Kenneth C. Patty, First Assistant Attorney General, and he whole-

heartedly concurs with me that two *separate records must be kept*. We are providing a registration book for Federal Elections Only for the county precinct registrars. It might be that some of the general registrars might decide to use this book for this year and see just how this works out and then they will know just what arrangements and changes will have to be made in their system before the 1966 Federal elections take place. If you desire to use these books, let us know and we will send you the requested number when they are available for distribution [fol. 97] in March. In the meantime, we have directed the precinct registrars to have the person making application to register to vote in Federal Elections only to fill out the usual forms and if he meets the requirements and is eligible to be registered then they will just have to file the forms and when the books are mailed to them in March they will have to enter the names on the new registration books.

CERTIFICATE OF TRANSFER—SECTION 24-87.1

Whenever the registrar issues a certificate of transfer he shall show on the certificate whether the person to whom the transfer is issued was registered under the provisions of Section 24-67 or Section 24-67.1. The registrar receiving the transfer shall enter the name of the person on the registration book or other type of record of that precinct maintained for persons registered under the section shown on the certificate of transfer on its appearing to his satisfaction that the person to whom the certificate was issued has resided, prior to the next election, for thirty days in the election district to which he desires to transfer. A supply of forms for this purpose is enclosed.

LIST OF PERSONS REGISTERED TO BE POSTED AND CERTIFIED TO CLERK—SECTION 24-78.

When you make up this list just as you have been required to do in the past, you will simply make two separate lists—one showing the names of the persons registered under Section 24-67 for all elections and the other for the persons registered under Section 24-67.1 for **FEDERAL ELECTIONS ONLY**.

So you see there is really very little change in the law and in your procedure for registering applicants other than keeping two separate registration records and being very careful in keeping the two types of registrations in the proper registration roll.

The new law pertaining to registrations, as well as the law authorizing persons to file certificates of continuing residence, *becomes effective on the 19th day of February, 1964.* Therefore, you will proceed to register and transfer applicants as set out above after that date. You will find enclosed a supply of the Certificate of Continuing Residence Forms for your use in supplying persons who may ask for them. In reading the law you will observe under Section 24-17.2 any person who presently is registered on your books under Section 24-67 and who desires to vote in Federal elections this year without the payment of the capitulation tax may do so by merely filing this certificate of continuing residence with the treasurer of the county or city on or before May 2, 1964.

Kindly let me know if I can be of further assistance in this matter.

Sincerely yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

ENCLOSURES

[fol. 98]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 7

Registered on "ROLL OF PERSONS REGISTERED
FOR ALL ELECTIONS" Code Section 24-67

APPLICATION FOR REGISTRATION

NOTE: Section 20 of the Constitution of Virginia provides who may register, and expressly directs that in the written application to register the applicant shall give certain information. Below are set forth such parts of Section 20 as concern the application.

"Who May Register. Every citizen of the United States, having the qualifications of age and residence required in Section Eighteen, shall be entitled to register, provided:

" he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the state, county, and precinct in which he voted last;"

Date

Signature of Applicant

[fol. 99]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 8

Registered on "ROLL OF PERSONS REGISTERED
FOR FEDERAL ELECTIONS ONLY"

Code Section 24-67.1

APPLICATION FOR REGISTRATION

NOTE: Section 20 of the Constitution of Virginia provides who may register, and expressly directs that, in the written application to register the applicant shall give certain information. Below are set forth such parts of Section 20 as concern the application.

"Who May Register. Every citizen of the United States, having the qualifications of age and residence required in Section Eighteen, shall be entitled to register, provided:

" he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the state, county, and precinct in which he voted last;"

Date

Signature of Applicant

[fol. 100]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 9

Form C-52

Code Section 24-67

CERTIFICATE OF REGISTRATION OF A PERSON
WHO PAID THE POLL TAXES REQUIRED BY SEC-
TION 20 OF THE CONSTITUTION PRIOR TO REGIS-
TRATION, INCLUDING THOSE WHO REGISTERED
DURING THE YEAR IN WHICH THEY BECAME
TWENTY-ONE YEARS OF AGE.

Virginia: City of

The undersigned Registrar for Precinct,
in Ward, in the said City,
hereby certifies that the person herein named is duly regis-
tered on the list of voters registered since Jan. 1, 1904, in
said precinct, in said Ward, as follows, viz: Date of Regis-
tration

....., 19

Color No. Name

Date of Birth Age years,

Occupation

Place of Residence

Length of Residence in State years,

City Precinct

if naturalized, Date of Papers

Issued by Court of

and is registered as* exempt from payment of
poll tax as a prerequisite to the right to vote. This cer-
tificate is given to enable the person named to change his
place of voting to Precinct, in

..... Ward, City
..... District, County of

and that his name has been erased from the registration
books of the precinct first above named.

Dated this _____, 19 _____

Registrar.

*Note—IF NOT exempt insert the word "not" in this blank.

Transfer should be given or mailed to the person requesting same and the voter should take it to the registrar of his new residence in order to have his name entered on the registration books in his new precinct.

[fol. 101]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 10

Form C-52A

Code Section 24-67.1

CERTIFICATE OF REGISTRATION OF A PERSON
WHO REGISTERED WITHOUT THE PAYMENT OF
POLL TAX AND IS ENTITLED TO VOTE IN ELEC-
TIONS FOR FEDERAL OFFICES ONLY.

Virginia: City of _____

The undersigned Registrar for _____ Precinct,
in _____ Ward, in the said City,
hereby certifies that the person herein named is duly regis-
tered on the list of voters registered since Jan. 1, 1904, in
said precinct, in said Ward, as follows, viz: Date of Regis-
tration _____

_____, 19 _____,

Color _____ No. _____ Name _____

Date of Birth _____ Age _____ years,

Occupation _____

Place of Residence _____

Length of Residence in State _____ years,

City _____ Precinct _____;

if naturalized, Date of Papers _____

Issued by _____ Court of _____,

and is registered as* _____ exempt from payment of
poll tax as a prerequisite to the right to vote. This cer-

tificate is given to enable the person named to change his place of voting to Precinct, in

Ward, of the City
 District, of the County of
 and that his name has been erased from the registration books of the precinct first above named.

Dated this, 19

Registrar.

*Note—IF NOT exempt insert the word “not” in this blank.

Transfer should be given or mailed to the person requesting same and the voter should take it to the registrar of his new residence in order to have his name entered on the registration books in his new precinct.

[fol. 102]

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 11

Form CR-1

CERTIFICATE OF CONTINUING RESIDENCE

I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of

(city or county)

residing at

(street and number, or place of residence therein)

and that it is my intention not to remove from the city or county stated herein prior to the next general election.

.....
 (Signature of resident)

Witnessed:


OR

70

Subscribed and sworn to before me this
day of 19

.....
Notary Public

DEFENDANTS' EXHIBIT 29

(See Opposite) 

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
DEFENDANTS' EXHIBIT 29

ADDRESS

OF

Albertis S. Harrison, Jr.

GOVERNOR

TO THE

GENERAL ASSEMBLY OF VIRGINIA

EXTRA SESSION

TUESDAY, NOVEMBER 19, 1963



SENATE DOCUMENT NO. 1

COMMONWEALTH OF VIRGINIA

Department of Purchases and Supply

Richmond

1963

ADDRESS OF

ALBERTIS S. HARRISON, JR.

GOVERNOR

TO THE GENERAL ASSEMBLY OF VIRGINIA

TUESDAY, NOVEMBER 19, 1963

Mr. Speaker, Mr. President and Members of the General Assembly:

Again it becomes necessary, in the opinion of a Governor of Virginia, to convene the members of the General Assembly in extraordinary session. The preparation for such a session, and the added labors that are its incident, are more than compensated for me by the opportunity it affords to renew friendships and associations that have been cultivated through the years and grow stronger with the passage of time.

I delight in your presence in the Capitol. That you came fifty days ahead of normal schedule is the reason we must apologize for the disarray of the house in which you shall labor. I hope you will not think it indelicate if your Governor now hints, as discreetly as he can, that your visit might be terminated after a brief stay!

It is with sadness that this morning we note the absence of three former members of this Body. In the passing of State Senator Harry C. Stuart, of Russell; Delegate Melvin L. Shreve, of Accomack; and Delegate H. Ray Webber, of Covington, Virginia has lost able and dedicated public servants, the General Assembly has lost attractive and colorful members, and you and I have lost valued friends. Each, in his own way, contributed to the commonweal, and each left his imprint on this State.

I would also note with pleasure the presence this morning of the Honorable George F. Barnes of Tazewell, the Honorable George N. McMath, of Onancock, and the Honorable George J. Kostel, of Clifton Forge. We welcome them. The privilege of serving in the General Assembly is one of the highest honors that can come to a Virginian. The opportunity for service to Virginia is without

limit, and the attachments that are formed here will bind and last as long as you live.

Section 73 of the Constitution of Virginia imposes upon the Governor the duty, "When, in his opinion, the interest of the State may require," to convene the General Assembly. The action that I have taken, in summoning you to meet this morning, was not taken precipitately. I am not unmindful that you will convene again in regular session on January 8, 1964. But neither am I oblivious of the fact that any matter that concerns the elective franchise is political and controversial, and that it would be unrealistic to expect a legislative body to approach unanimity to the point that legislation dealing with the franchise could be enacted as emergency bills during the regular session. I shall endeavor to point out in this message impelling reasons for the enactment of certain legislation, and for it to become effective sooner than ninety days after the date of the adjournment of the 1964 General Assembly.

In 1962 the 87th Congress of the United States passed Senate Joint Resolution Number 29, signed by the President on August 27, 1962, wherein it is proposed that the Constitution of the United States of America be amended to provide that:

"the right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax."

For this amendment, which will be the twenty-fourth to the United States Constitution, to become effective, it must be approved by thirty-eight states. As of this date, thirty-six states have ratified it. And, it is probable that two additional states will give approval prior to the elections to be conducted for federal offices in Virginia in 1964. While such approval may not be forthcoming, I am of the opinion that Virginia cannot afford to take that gamble. Accordingly, it is recommended that the General Assembly enact legislation, in anticipation of the ratification of the proposed Amendment.

The purpose of Amendment 24 is to prohibit the requirement of the payment of a poll tax as a prerequisite to registration or voting in federal elections. To consider its effect on elections for federal offices, it is necessary to invite your attention to certain provisions of our Virginia Constitution.

At the outset, let me point out that the proposed Federal Constitutional Amendment will have no effect whatsoever on State or local elections, or on

any provision of the Virginia Constitution and the laws of Virginia that govern registration for, and voting in, State or local elections.

Neither will the Amendment have any effect on any Virginia Constitutional provision or law that concerns federal elections, other than in one particular,—the payment of a poll tax cannot be required as a condition for registering or voting in such an election.

It is important to understand that, consistent with the idea "that every man who lives under a government ought to contribute something to the support of that government," often expressed in the debates of the Constitutional Convention of Virginia, 1901-1902, that Convention wrote into Virginia's Constitution Section 173. By this section, the General Assembly is required to levy a State Capitation Tax of one dollar and fifty cents per annum on every adult resident of the State of Virginia.

Of this tax, one dollar is applied in aid of public schools, and fifty cents thereof returned to the localities. The capitation tax in Virginia is but another tax. It is a debt and is due and payable by all persons on whom it is lawfully levied. It is the one tax that is universal in its application and is owed by every resident of Virginia over twenty-one years of age.

The universality of the capitation tax accounts for its being a part of the election machinery of this State. Article II of the Constitution of Virginia contains twenty-two sections and deals with Elective Franchise and Qualification for Office. The one section about which, regardless of our political affiliation, partisanship or philosophy of government, there can be no dissent, is the provision that only residents of the Commonwealth of Virginia should vote in elections held in this State.

Borrowing again from the debates of the Constitutional Convention of 1901-1902,—and I quote—"this provision as to residence was recommended in the Constitution in order that the voter may be thoroughly identified with the community and may have common lot with the people of the State, by a fixed residence in the State for a definite period." The period of residence remained two years from the Convention of 1902 until 1928, when it was reduced to one year.

I deem it pertinent here to invite your attention to the language of Section 6 of the Virginia Bill of Rights, which, after providing that all elections ought to be free, goes on further and says: "... and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage"

If any one provision of our organic law is to be accorded more respect and

importance than another, I would say that the one which we must hold inviolate, and around which we must throw the greatest protection, is that which confines participation in Virginia elections to residents of this State.

Certainly the framers of the Constitution of Virginia were so persuaded. Time will not permit a discourse here on the history of suffrage in Virginia. It suffices to say now that when the members of the Convention who wrote the present Constitution reviewed that history, they found that, except for a few occasions and for short periods, the right to vote in Virginia had always been on a restricted basis, and that Virginians had repeatedly expressed the desire for a restricted electorate. Notwithstanding this background, they knew that if participation were confined to residents of Virginia, and proper publicity given to elections and the list of persons allegedly qualified to vote, there could be a relaxation as to any property qualification as a prerequisite to voting.

As a consequence, and operating under the Constitution of 1902, Virginia has the simplest system of registration and voting of any State in the Union. Any resident of Virginia, with sufficient intelligence to know such things as his name, age, date and place of birth, residence and occupation, and can scribble a legible signature, can register. He need own no property—or pay any taxes, other than a \$1.50 a year capitation tax, for not exceeding three years. Once admitted to registration, he is registered permanently. Unlike so many states, Virginia does not require that this registration ever be renewed.

The framers of our Constitution recognized that if we were to have permanent registration, and thereby promote full participation in elections by the residents of this State, a means would have to be devised to provide annually a current list of the residents of this State. Obviously, we could not rely on the registration books alone. A safeguard had to be provided to determine whether those persons who had registered were still residents of Virginia and entitled to participate in the election in which they offered to vote.

A person who removes himself from this State and abandons his residence here, is not entitled to vote in this State. By the same token, Virginia is gaining population rapidly, and it is important that these welcomed new citizens be registered and encouraged to vote immediately they satisfy the conditions, both as to residency and registration incident to voting.

The architects of the Constitution, having determined upon permanent registration, and having abandoned the requirement of ownership of property as a qualification to vote, and then having failed to provide any effective literacy test, were confronted with the problem of how the electorate could be restricted to residents of this State,—and some stability attained.

Obviously they could not use the real estate or personal property tax list, for ownership of property was not to be made a condition for voting, and for the further very practical reason that many residents of Virginia do not own real or personal property, but do possess the intelligence, interest, and the ability to exercise the right of franchise.

It became apparent that the only list which should contain the name of every adult resident of Virginia was the capitation tax list. Accordingly, and out of the genius of that body of men, originated our present system, whereby it is presumed that any person, assessed with a capitation tax (and thereby alleged to be a resident of Virginia) who comes forward and voluntarily pays the assessment, six months prior to a general election, shall be presumed to be a resident of Virginia, and shall be deemed to have satisfied those provisions of the Constitution of this State which restrict voting to such residents.

Again I remind you that the capitation tax is Virginia's only universal tax that is assessed on every adult. It is a debt and is owed like all other taxes. It is paid by the citizens of this State in the same manner as a good citizen pays his other tax obligations. Because the tax is universal, the names and addresses of the persons against whom it is assessed are obtained by the Commissioners of Revenue from innumerable sources, and in some instances, the tax is assessed erroneously and inadvertently on people who have moved from Virginia, people who are dead, and some who are nonexistent. Certainly the voluntary payment of this tax by a person is fairly conclusive proof of the correctness of the assessment, and confirmation by that person of the fact that he is still a resident of this State.

In any event, this system has served Virginia well for more than a half a century. Last year, approximately one and a quarter million Virginians paid this tax.

The requirement that the tax be paid six months prior to the General Election is to prevent fraud, corruption and dishonesty, and to promote stability in the electorate.

To understand the six-month provision in our Constitution, one must have some knowledge of the conditions that existed in Virginia prior to the Constitutional Convention of 1901-1902. In that Convention, it was acknowledged time and again, by gentlemen from all sections of the State, that politics in Virginia were then corrupt; that there was a large purchasable element; that voters were bought and sold; that manipulation of voters by corrupt political leaders often constituted the balance of power in elections. It is interesting to note here that one of the members of the Convention, in commenting on this

corruption, said: "It is not the Negro vote which works the harm . . . it is the depraved and incompetent men of our own race, who have nothing at stake in government, and who are used by designing politicians, to accomplish their purposes, irrespective of the welfare of the community."

It was because of this background that those who wrote the laws, under which we now operate, determined that participation in Virginia's elections would be encouraged by all interested citizens and those who had a stake in Virginia, and further that Virginia would throw around her elections, and the participants therein, every possible protection. This they accomplished, first by requiring those who desired to participate in elections to attest their residency by payment of a lawful tax, six months prior to the General Election.

Certainly there is no individual possessing the interest and concern to have a voice in his government who does not know, six months in advance, that he will want to vote on who is to represent him at all levels of government, and on all the issues properly to be submitted to the people.

Then, as an added safeguard, they wrote Section 38 of the Constitution, imposing specific duties on Treasurers, Clerks of Court and Sheriffs, in regard to the making, filing, certifying and publicizing the list of those who had paid poll taxes. And they required all of this to be done well in advance of any primary or General Election. The list is not only available for inspection in the office of every Clerk, but it must be posted at every polling place, and is thereby accessible for inspection by every citizen and every person who passes by. It is this publicity that has the prophylactic effect. It is the finest medium ever devised to prevent fraud and improper voting by non-residents of Virginia, or by any person who is not qualified from a residential standpoint to vote in a Virginia election.

Section 36 of the Virginia Constitution imposes upon this Body the responsibility to "enact such laws as are necessary and proper for the purpose of securing the regularity and purity of general, local and primary elections"

It is because of this responsibility that we are here assembled. If the proposed Amendment 24 to the United States Constitution is adopted, and payment of the poll tax can no longer be a prerequisite to registering or voting, we will have no adequate safeguard under existing statutes to prevent persons who are registered, but no longer reside in this State, from voting in the 1964 elections, and in federal elections thereafter held.

In consideration of this matter, we must always keep in mind that under our system of permanent registration, a person once registered in Virginia is forever registered, until his name is purged from the list. In some of our counties

and cities, the registration books are seldom, if ever, purged. Persons are carried on some books who have been dead for years or who have long since moved their residence from Virginia, or are otherwise disqualified from voting. In a hotly contested election, the opportunity to commit fraud or irregularities would be so great and so easy that our only protection is to remove the temptation by legislation at this extra session.

It has taken me longer than I should to get to this point in my remarks to you. In brief, and in anticipation of the adoption of Amendment 24, we need to devise something which will do for Virginia in federal elections what our capitation tax list presently accomplishes. That such action would be necessary has been a matter of common knowledge for many months, and has been the subject of numerous conferences between your Governor, the Attorney General of Virginia, and others, who are concerned with preserving the purity of Virginia's elections. At my request, the Attorney General has prepared bills which I hope will have your approval. Our election laws are numerous and complicated because they involve not only federal, but State, county, city and town elections. They have evolved over a long period of years, and have come into being in an effort to promote full participation in elections and to assure their honesty. Under our Constitution, a great many public officials are charged with various responsibilities and duties to make certain that all properly registered residents of this State are permitted to vote. Therefore, we have to amend numerous sections of the Code.

However much we may disagree with the action of those states that have and will adopt the proposed Amendment 24 to the United States Constitution, we must agree that if this Constitution is to be amended, the manner in which it is being presently accomplished is legal, and certainly preferable to the judicial amendments thereto that we have witnessed in recent years.

I, therefore, recommend that this General Assembly enact a law to become effective upon the adoption of Amendment 24, prohibiting the denial or abridgment of the right of any citizen of Virginia to vote in any primary or other election for President or Vice President, or for Senator or Representative in Congress, by reason of failure to pay any poll tax or other tax.

The provisions in the Constitution of Virginia which require the payment of a capitation tax as a prerequisite to registering and voting in State and local elections, are deeply embedded therein, involve innumerable basic provisions, and will so remain until two separate General Assemblies and the people of Virginia decide otherwise. It is my considered judgment that it would be unwise to give even cursory attention or thought to tampering with Virginia's Constitution

without careful and painstaking study. Such action at this extra session would be hasty, ill advised, and not in the best interest of the people of this State.

Since the payment of a capitation tax will remain a prerequisite to voting in State and local elections in Virginia, I recommend that such payment continue to be accepted as proof of residency, and as a compliance with the residency requirement of Section 18 of the Virginia Constitution as to federal elections.

I further recommend that a bill be enacted, effective upon adoption of Amendment 24, which will give to every resident of Virginia the privilege of registering and voting, in federal elections, without regard to the payment of a capitation tax, or the time of its payment, provided he complies with other provisions of the Constitution and laws of Virginia, and, provided further, that six months prior to the General Election, he files a certificate with the Treasurer of the county, or city, in which he resides, setting forth that he is a resident of Virginia. To give such a certificate proper authenticity, it should be witnessed or acknowledged.

The Treasurer, Clerk, Sheriff and Sergeants, will be required to verify, certify and post such certifications of residence in exactly the same manner, and form, as they presently handle the list of persons who pay capitation taxes. The same publicity will attend both lists, and the same protections will prevent fraud and improper voting by both classes of voters.

In essence, the bills which are proposed will provide two methods by which residents of Virginia may register and vote in elections. One will be to comply with all existing provisions of the Constitution and laws of Virginia, including the payment of a capitation tax (which establishes residency) six months prior to the General Election. A person will thereby qualify to vote in all elections, federal, State and local. The other, which will take effect upon the adoption of the 24th Amendment, will enable any resident of Virginia to register without payment of any poll tax, and to vote without payment of such tax, in federal elections only, provided that he establishes Virginia residency by filing of the certificate of residence six months prior to the General Election.

It is, of course, unnecessary for me to remind you that all legislation enacted at this session of the General Assembly is conditioned upon the ratification of the proposed 24th Amendment to the Constitution of the United States by the necessary number of states. We concede the possibility that such ratification may not occur prior to November, 1964. Irrespective of this, we simply cannot go into the important elections of 1964, in which we will select in Virginia one United States Senator, ten Congressmen, and participate in the election of a President and a Vice President, without the necessary safeguards. The privilege

of selecting those who govern us is the most important responsibility discharged by any citizen of Virginia. Every protection should be provided to the end that this participation be not only free and full, but assured to and exercised by only those persons entitled to the privilege.

To those of you who may be tempted to rewrite the sections of our State Constitution dealing with the right of franchise, or may feel that this will be an easy accomplishment, I would remind you that the Constitutional Convention of 1901-1902 held as great an array of talent as has ever been assembled at any one time in Virginia. The one impelling and paramount reason for that Convention was the corruption, fraud and dishonesty that had crept into the political life of Virginia, and this was due in large measure to the election machinery then in operation. That Convention devoted more time, debate and prayerful consideration to the matter of suffrage, than to any other one subject. The Constitution under which we have operated for over sixty years was the outgrowth of nearly two years of deliberation.

Mr. Richard McIlwaine, a member of the Convention from Prince Edward County, in addressing himself to the very subject which we are today considering, had this to say on April 1, 1902:

"It will be readily granted by every member of the Convention, that the purpose which brought us together is to frame a Constitution adapted to the needs of the people of Virginia—an instrument which when completed and adopted as the organic law of the Commonwealth, shall embody those seminal principles which are fitted in their effective application to promote the welfare of every dweller within our bounds, and to restore and perpetuate the honor and glory of the old State."

And again I would quote from the remarks of this distinguished gentleman, made on the same day, and as follows:

"Here, then, we have briefly and imperfectly, the problem given us for solution. We are to legislate for all these classes, and to meet all these conditions, in such manner that every citizen, of whatever locality or circumstance, may not only receive evenhanded justice, but find in the organic law of this State and the civil and political arrangements emanating therefrom, incentive and inspiration to elevate his character, enlarge his views of life, and improve his economic and social status."

I would remind those who would now undo the work of that great Convention, and rewrite the most basic provisions of our Constitution, to consider

for a minute the accomplishments of Virginia under her present Constitution, and how magnificently have been achieved the goals which were envisioned by that group of sincere and inspired men.

Today Virginia enjoys a status that is the envy of the residents of every state in the Union. Today, the people of this State are enjoying a progress and a prosperity that has never before been equaled. If there be any land where the people are living a rich, a full and a good life, it is Virginia. You and I are the proud citizens of a State whose name is symbolic of the word integrity, and it matters not how distant our travels may take us, you seldom meet a man or woman who does not find some way, however remote, of identifying himself with Virginia.

I wish that we, as members and former members of the General Assembly of Virginia, could take credit for this. It would be a gracious act if I could attribute the glory to my predecessors in office, the former Governors of this Commonwealth. To you and to them does go credit, but the true greatness that is Virginia lies in the rank and file of her people.

Virginia through the years has been protected and nourished by their love, their interest, their concern, their identification with the land, and their dedication. It is these people who have exercised great wisdom and judgment in the choice of their leaders; who have had the concern to appraise and to evaluate when they went to the polls; and who have valued their freedom and their property enough to pause, consider and select when a decision was theirs to make. It is to these people, the residents of Virginia, those with something at stake, with sufficient interest, and possessed of the intelligence and will to exercise the right of suffrage under the Constitution and laws of Virginia, that account for the glory of this Commonwealth.

The issue that confronts us at this session is in fact a very narrow one,--to assure that the electorate of Virginia is made up only of *bona fide* residents of this State; to make certain that the purity of our elections be preserved.

We can do Virginia no hurt if we but remember the admonition of George Mason in our Declaration of Rights "that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage."

[fol. 114]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 30

AFFIDAVIT

I, Robert Y. Button, Attorney General of Virginia, do hereby certify that the attached document, consisting of ten pages, is a true and correct copy of the statement made by me before a specially called meeting of the joint Privileges and Elections Committees of the House of Delegates and of the Senate of the General Assembly of Virginia on November 12, 1963, prior to the convening of the Extra Session 1963 of the said General Assembly. I do also certify that this is a true and correct copy of the statement made by me before the joint public hearing of these same Committees held on November 19, 1963, the first day of the convening of the said Extra Session 1963. I also certify that following my oral delivery of this statement to the said joint public hearing, the original thereof was filed with the Clerk of the said Committees.

/s/ ROBERT Y. BUTTON
Robert Y. Button
Attorney General

STATE OF VIRGINIA
CITY OF RICHMOND

Subscribed and sworn to before me this 20th day of April, 1964.

/s/ MABEL G. HURT
Notary Public

My Commission expires May 8, 1966

[fol. 115] The proposed 24th Amendment to the Constitution of the United States is as follows:

"Section 1, The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

"Section 2, The Congress shall have power to enforce this article by appropriate legislation."

It is clear from the hearings held in the Judiciary Committees of the Senate and House of Representatives and from the language of the amendment itself that this proposed amendment affects only the right to vote in named federal elections and has no application to the qualification of voters in State elections. In effect, this amendment makes an exception to the right of the states to set the qualifications of electors in that the failure to pay any poll tax or other tax cannot be used as a denial of the right to vote in these named federal elections. The right of the states to fix qualifications for voters is not changed in any [fol. 116] other respect.

Section 18 of our Constitution provides as follows:

"Every citizen of the United States, twenty-one year of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days, *next preceding the election in which he offers to vote*, has been registered, (and has paid his State poll taxes, as hereinafter required,) shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal.

"The right of citizens to vote shall not be denied or abridged on account of sex." (Italics and parentheses supplied)

The effect of the 24th Amendment, if adopted, would be that that portion of Section 18 of the Constitution "and has paid his State poll taxes, as hereinafter required" carried in the parentheses above could no longer be applicable in the named federal elections, but it would be applicable [fol. 117] in every other election. With these two fundamental statements in mind, the bills, which you are considering today, have been prepared. There is a long bill and a short bill.

Considering the long bill first, you will note that Paragraphs A and B of Section 1 are completely new. Paragraph A sets forth the purposes and reasons for the proposed legislation. This is succinctly stated as furnishing the methods by which persons can register and vote in federal elections without the payment of any poll tax or other tax, to continue in effect all other registration and voter requirements of the Constitution of Virginia that would continue as presently existing in all elections except for the named federal offices set forth in the proposed 24th Amendment to the Constitution, and to provide methods by which persons may furnish proof of continuing residence as required by Section 18 of the Constitution of Virginia.

Paragraph B simply sets forth the language of the proposed 24th Amendment to the Federal Constitution which would be binding in Virginia if and when it is finally ratified. In Virginia, under our Constitution, there is only one registration which is permanent. Section 18 of the Constitution quoted above has always required residence of a specific time *next preceding an election* in which a person offers to vote. The assessment of the capitation or poll tax is made upon residents over twenty-one years of age as required by Section 173 of the Constitution. The bill is [fol. 118] sent to a specific address. Payment admits continued residence. If a person is moving, he certainly would not pay this bill. Payment of the poll tax can therefore be accepted as admission of residence and of the intent to continue. Virginia has always accepted the payment of the poll tax as proof of continuing residence. As this method of proving continuing residence cannot be used in Federal elections, it is necessary to have legislation to provide the means of proving that the residence proven at the time of

registration has continued and that the voter intends to remain until the next general election. This is necessary in order that lists of such voters may be provided in advance of the election.

In the bills which you are considering, this has been accomplished by giving the registered voter the choice of proving his continued residence by either (1) filing a certificate of continuing residence as set forth in Section 24-17.2 or (2) qualifying to vote in State elections. Everyone qualified in State elections will be automatically qualified to vote also in federal elections, but those who qualify only to vote in federal elections will not be qualified to vote in State elections.

In considering the specific bills before you, you will find that there are only three key sections in the long bill—Sections 24-17.1, 24-17.2 and 24-67.1. The other proposed amendments or new sections are only consequential and necessary in order to dovetail the requirement for voters who will be qualified to vote in federal elections only into our existing laws and procedures.

[fol. 119] The numbering of the sections follow the present Code provisions. Sections 24-17.1 and 24-17.2 deal with voting. Section 24-67.1 deals with registration.

I believe it would be more logical to consider the registration sections prior to considering the voting sections. Therefore, let us consider first Sections 24-67 and 24-67.1.

Paragraph A of Section 24-67 is identical in meaning with the present Section 24-67. There has been small language changes to make it conform to proposed new Section 24-67.1 but there is absolutely no change in meaning in Paragraph A from the present section.

Paragraphs B and C of Section 24-67 are completely new and are self-explanatory. I think the comments following these sections are clear and I do not know how I can add to what is said there. Paragraph B provides that there shall be a separate registration book for all persons who have already registered or who at the time of registering have paid the necessary poll tax so that the book of these registrations would be separate and distinct from those who register under new proposed section 24-67.1. Paragraph C provides that persons registering under this section shall

be entitled to vote in all elections and that persons that are entitled to register under the new Section 24-67.1 would not be entitled to vote in any elections except the election of federal offices specified therein until they shall have registered under Paragraph A of this section which is the registration after payment of poll tax. Under vari-[fol. 120] ous sections of our State Constitution, this is necessary and essential.

Proposed Section 24-67.1 is a completely new section which provides for the registration of those persons who have met the qualifications of age, residence, and other requirements of our Constitution but who have not paid the poll tax required by our Constitution for voting in all elections but prohibited in federal elections.

Paragraph B provides that a separate registration book shall be kept for those people registering under this section and Paragraph C provides that the persons registered under this section shall be entitled to vote only in federal elections and shall not be deemed registered to vote in any other election held in the State. This is made abundantly clear in order that no one who registers may be misled.

It is absolutely necessary that there be separate books for the two types of registrants and that they not be confused. There is no difference in the requirement for registering except as to the payment of the poll tax.

After the registration has been completed, we come to Sections 24-17, 24-17.1 and 24-17.2 which relate to voting.

Section 24-17 was amended by adding the italicized word "general" which is self-explanatory and cutting out the words where the asterisk is shown "and has paid his State poll taxes as required by law" and substituting in [fol. 121] place thereof the italicized language by spelling out the provisions without stating that the payment of such tax is "required by law". The comments under this are self-explanatory.

Section 24-17.1 is new and spells out who is entitled to vote for certain federal offices whereas Section 24-17, spells out who is entitled to vote in all elections both State and federal.

Section 24-17.2 is a completely new section which spells out how a person who does not prove his continuing residence by the payment of a poll tax may prove such continuing residence by filing a certificate of residence. This section sets forth the form but does not require the certificate to be in the identical form as in the statute but states "in form substantially as follows". Of course, the registrant proved his residence when he registered and no further certificate is required in the calendar year in which he registered. This certificate states that he has been a resident of Virginia since the date of his registration, that he is now a resident, giving his address, and that it is his present intention to remain a resident of Virginia until the next general election to which this certificate has application. This meets the requirement of Section 18. It is nothing new except as to manner of proving what has always been required. And it is provided in Paragraph A of this section that such continuing residence may be proven by filing the certificate above referred to or by making himself qualified to vote in Virginia State elections which [fol. 122] includes the payment of the required poll tax. Such certificate provided by Paragraph B shall be filed with the treasurer of his city or county not earlier than the first of October of the year next preceding in which he offers to vote and not later than six months prior to the election. Paragraph D of this section provides that the treasurer shall keep these certificates in his office for public inspection for at least two years after the same have been filed; and Paragraph E provides that nothing in this or any other section of this Act shall be construed as effecting in any way the provisions of law relating to the voters in the armed services.

Section 24-28.1 is a new section which provides for the preparing and furnishing of such books as may be necessary for the registration of those who register for voting in federal elections only and makes an appropriation to meet the expense of securing the books.

Section 24-78 has been amended to provide for the posting and certifying of both lists, that is the present list that has always been posted in regard to State elections and a new list provided herein for federal elections only.

The timing and method of handling is the same in both cases.

Section 24-79 provides that the Clerk shall record in separate books the two lists provided for by these Acts. [fol. 123] Section 24-87.1 is a new section that permits the transfer of people who register under the new section for federal elections only and provides that such transfer be placed in the proper book in the new precinct for federal elections only.

The other sections amended or new sections simply refer to the duties of the officers relative to the new lists of people who are qualified to vote in federal elections. They are to make the procedures with reference to voter lists as nearly the same as possible.

Section 3 of this Bill is the usual severability clause which is the same as has been used many times in the past and needs no amplification.


Paragraph 4 is the effective date that this act would become effective and provides that it shall become effective when the proposed 24th Amendment to the United States Constitution is ratified by the requisite number of states or ninety days after the adjournment of the Special Session of the General Assembly at which it is enacted which ever may occur later, and this means that if the proposed Amendment 24 to the United States Constitution should never be ratified this bill would never become effective.

The second Bill, or the short bill, applies only to the calendar year 1964 and is made necessary by the possibility that the 24th Amendment to the United States Constitution might be adopted some time during the calendar year 1964 too late for the certificate of residence to be filed under the long bill. This provides an opportunity for those persons [fol. 124] who may want to file the certificate of residence and be qualified to vote in the 1964 federal elections to do so without the payment of any poll tax or other tax if the 24th Amendment is ratified. The mechanics of the bill in short form are the same as the mechanics of the long bill. The certificate of continuing residence is the same and would be filed not later than six months prior to the general election held in 1964. In order for this bill to have any effect, it would have to be passed as an emergency

bill. It also carries an appropriation so that books may be furnished to the treasurer in which to record the certificates filed.

A sincere effort has been made to make the proposed legislation as simple and as easily understood as possible. There are references to various Code section numbers, which is always confusing, but this is much simpler than writing out in full what is in the section mentioned. Many sections of the Code had to be amended in order to provide for the new list of voters. The handling of both the old list and the new list was made the same as to times and procedures. This should avoid a lot of confusion in the administration of these laws.

DEFENDANTS' EXHIBIT 31

(See Opposite) 

[fol. 125]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANT'S EXHIBIT 31

SUGGESTED CHANGES TO
VIRGINIA ELECTION LAWS
IN CONNECTION WITH
PROPOSED 24th AMENDMENT TO
THE CONSTITUTION OF UNITED STATES
WITH COMMENTS

A BILL

To authorize persons, in anticipation of ratification of the 24th Amendment to the Constitution of the United States, to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections to be held in the year 1964 without payment of a poll tax, to prescribe certain duties of the State Board of Elections, and to make an appropriation to the State Board of Elections.

Be it enacted by the General Assembly of Virginia:

1. (1) During the calendar year 1964 only and subject to the other provisions of this Act, every resident of Virginia who has been registered to vote prior to December 1, 1963, and who desires to vote during the calendar year 1964 without the payment of poll tax or any other tax, upon the adoption of the proposed 24th Amendment to the Constitution of the United States, in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in the Congress of the United States, may file a certificate of continuing residence in the office of the treasurer of his county or city, which shall be in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of _____ (city or county), residing at _____ (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public"

Such certificate shall be filed not later than six months prior to the general election held in November, 1964. Every such certificate shall bear the signature of the person offering the same and shall be verified by his affidavit or witnessed by at least one adult. Such certificate shall be conclusive of the facts stated therein, subject only to challenge under the provisions of § 24-253 of the Code.

(2) Such certificate shall be received by the treasurer, dated and marked filed, and upon the ratification of the proposed 24th Amendment to the Constitution of the United States, shall have the same force and effect as certificates of continuing residence filed under the

provisions of § 24-17.2 of an Act of the General Assembly enacted at the special session of the General Assembly, 1963.

(3) The State Board of Elections shall forthwith prepare and distribute to the several county and city treasurers books in which such treasurers shall record the certificates of residence as provided for in this Act. The certificates filed in the office of such treasurer shall be entered on such books alphabetically and by magisterial districts in counties and by wards or other election districts in cities.

2. There is hereby appropriated out of the general fund in the State treasury to the State Board of Elections a sum sufficient estimated at one thousand dollars.

3. An emergency exists in that the ratification of the proposed 24th Amendment to the Constitution of the United States may be proclaimed at any time, with the result that new procedures may be necessary to facilitate voting at the primaries and general elections in 1964, and accordingly this Act is in force from its passage.

COMMENT

The object of this Bill which has an emergency clause is for the purpose of enabling persons who expect to vote in federal elections without the payment of a poll tax to file the certificates provided for in the following Bill in ample time.

A BILL

To amend and reenact §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124 of the Code of Virginia, and to amend the Code of Virginia by adding thereto sections numbered 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, all of which amended and new sections relate to registration and voting in State, local and Federal elections, and to the duties of certain election officials; and to make an appropriation to the State Board of Elections.

Be it enacted by the General Assembly of Virginia:

1. (a) Pursuant to the mandates of the Constitution of Virginia (including, without limitation, the provisions of Section 6 and Section 36 of the Constitution of Virginia), this Act is passed (1) to enable persons to register and vote in Federal elections without the payment of poll tax or other tax as required by the 24th Amendment to the Constitution of the United States, (2) to continue in effect in all other elections the present registration and voting requirements of the Constitution of Virginia, and (3) to provide methods by which all persons registered to vote in Federal or other elections may prove that they meet the residence requirements of Section 18 of the Constitution of Virginia.

(b) The right of any citizen of the Commonwealth of Virginia to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress of the United States, or to register to vote in any such primary or other election, shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

2. That §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding §§ 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, the amended and new sections being as follows:

Suggested Amendment to § 24-17

§ 24-17. *Persons entitled to vote at all general elections.*—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year; of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, has been duly registered * under the provisions of § 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for three years next preceding such election, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

COMMENT

Re: § 24-17

This section presently states the qualifications required of all persons offering to vote in all elections held in this State, in conformity with Section 18 of the Constitution of Virginia. It must be amended to take care of the different qualifications required in State and Federal elections, respectively.

(a) This section has always been interpreted by the Attorney General to apply only to *general* elections since §§ 24-22 and 24-367 state the qualifications required for voting in special elections and primary elections, respectively. The first amendment in line 4 adds the word "general" before the word "elections."

(b) The second amendment is made necessary in view of the proposed amendments to § 24-67 and the proposed enactment of new § 24-67.1, which, respectively, will require that separate lists be kept of (i) persons registered to vote in all elections, and (ii) persons registered to vote only in Federal elections. The amendment adds in line 5 a specific reference to registration under § 24-67 to make it clear that persons entitled to vote in State elections must be registered under that section.

[fol. 129]

(c) The third amendment in lines 6-9 simply rewords for clarity the present requirement that persons voting in State elections shall have paid poll taxes as required by Sections 18 and 21 of the Constitution of Virginia.

Suggested New § 24-17.1

§ 24-17.1. *Persons entitled to vote only at elections for certain federal officers.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, and who has been duly registered under the provisions of § 24-67, but who, at least six months prior to such election in which he offers to vote, has not personally paid to the proper officer all State poll taxes assessed or assessable against him for three years next preceding such election, or who has been duly registered under the provisions of § 24-67.1, in either case if he is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote in the following elections and no other: primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.*

COMMENT

Re: § 24-17.1

Section 24-17.1 is a new section which states the qualifications to vote in Federal elections held in this State, in conformity with the proposed 24th Amendment to the Constitution of the United States and Section 18 of the Constitution of Virginia. These qualifications are the same as the qualifications stated in § 24-17 with two exceptions. First, a person offering to vote in a Federal election may be registered on either of the lists required by proposed §§ 24-67 and 24-67.1. Secondly, the payment of poll taxes is not required as a condition of voting in any Federal election. Thus, § 24-17.1 allows any registered voter to vote in Federal elections, even if he has not paid poll taxes as required by Sections 18 and 21 of the Constitution of Virginia.

Suggested New § 24-17.2

§ 24-17.2. *Proof of residence required; how furnished.—(a) No person shall be deemed to have the qualifications of residence required by Section 18 of the Constitution of Virginia and §§ 24-17 and 24-17.1 in any calendar year subsequent to that in which he registered under either § 24-67 or § 24-67.1, and shall not be entitled to vote in any election held*

in this State during any such subsequent calendar year, unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by personally paying to the proper officer, at least six months prior to any such election in which he offers to vote, all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Proof of continuing residence may only be established by either of such two methods.

(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of _____ (city or county), residing at _____ (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public".

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.

(d) The treasurer shall keep in his office for public inspection, for at least two years after the same are filed, the certificates mentioned in paragraph (b) of this section.

(e) Nothing contained in this or any other section of this Act shall be construed as affecting any of the provisions of Chapters 2.1 and 13.1 of Title 24 of the Code relating to voters in the armed services.

COMMENT

Re: § 24-17.2

This is a new section requiring voters registered under §§ 24-67 or 24-67.1 to offer proof of residence in each year following the year of registration in conformity with Section 18 of the Constitution of Virginia. In the year of registration, the application for registration will constitute sufficient proof of residence.

Proof of residence may be furnished in person or otherwise by either of two prescribed methods, and no other way. Continuing residence may be annually established by (i) payment of the poll tax, thus continuing this long established method, or (ii) filing a certificate of residence in the form set forth in paragraph (b) of § 24-17.2 with the treasurer of his county or city not earlier than October 1 of the year preceding that in which he offers to vote and not later than six months prior to the election at which he offers to vote.

Notwithstanding the presumption raised by paragraph (c) of § 24-17.2, a voter's residence qualifications under either method may be challenged under § 24-253 of the Code of Virginia as is the case under present law.

Suggested New § 24-28.1

§ 24-28.1. *State Board of Elections to furnish certain books and forms; appropriation therefor.*—The State Board of Elections shall prepare such books as needed for use in recording the list of persons who have registered without the payment of a poll tax and forms for the filing of certificates of continuing residence and for the transfer of voters. Such books and forms shall be furnished by the Board to the clerks of the circuit courts of the counties and the corporation courts of the cities, to be by them distributed to the registrars and other election officials of their respective election districts. The Board shall as soon as possible after the effective date of this section, furnish to each registrar in the State at least one of each of such books and forms along with printed instructions as to the purpose of the forms.

The Board shall as soon as possible after the passage of this Act cause to be printed a supplemental compilation of the election laws of this State, which shall include all the provisions of this Act and shall distribute the same to the election officials throughout the State. A sum sufficient not exceeding one thousand dollars is hereby appropriated out of the general fund of the State to the State Board of Elections for the purpose of paying the expenses incurred under this section.

COMMENT

Re: § 24-28.1

This section is for the purpose of requiring the State Board of Elections to prepare and furnish to the election officials certain books and forms deemed necessary on account of these amendments and making appropriation therefor.

Suggested Amendment to § 24-67

§ 24-67. Who to be registered for all elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, * at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, and who * has paid to the proper officer all State poll taxes assessed or assessable against him for three years next preceding such election, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

(b) The names of all persons who have been registered under paragraph (a) of this section shall be enrolled in the registration book or type of record in use on the effective date of this Act, which shall be known as "Roll of Persons Registered for All Elections."

(c) Persons registered under paragraph (a) of this section shall be registered to vote in every general, special or primary election held in this State; provided that no person registered under § 24-67.1 shall be deemed registered to vote in any general, special or primary elections except those elections for the offices enumerated in paragraph (c) of § 24-67.1, until he shall have been registered under paragraph (a) of this section 24-67.

COMMENT**§ 24-67**

A condition of registration under Section 20 of the Virginia Constitution is the payment of all poll taxes assessed or assessable against the registrant for the three years next preceding that in which he offers to register. Payment of poll taxes for the three years preceding the year of election and registration are both conditions of voting under Section 18 of the Constitution of Virginia. The 24th Amendment to the Constitution of the United States, if adopted, will invalidate payment of the poll tax as a qualification for voting in Federal elections only, and also will necessarily invalidate payment of the poll tax as a qualification for registration for voting in Federal elections. With respect to all other elections, the Constitution of Virginia will still require the payment of poll taxes as a qualification for both registration and voting.

Hence, in order to comply most simply with the mandates of both the 24th Amendment and the Constitution of Virginia, it will be necessary to maintain two registration lists—one for persons qualifying to vote only in Federal elections and one for persons qualifying to vote in all elections (State and Federal).

Section 24-67 will continue to provide for the registration of all persons who wish to register to vote in all elections.

Paragraph (a) of proposed § 24-67 continues the same qualifications for registration for voting in all general elections as are now contained in Section 20 of the Constitution of Virginia, including the payment of all poll taxes assessed or assessable for the three years preceding the year of registration.

[fol. 133]

Paragraph (b) of the new section provides for a separate roll book or other record to contain the names of all persons who register under § 24-67.

Paragraph (c) provides (i) that persons registered under § 24-67 shall be registered to vote in all elections held in Virginia, and (ii) that persons registered under § 24-67.1 for voting in Federal elections only shall not be entitled to vote in other elections until, as the Constitution of Virginia requires, he shall have registered under § 24-67. The 24th Amendment does not change this for State elections.

Suggested New § 24-67.1

§ 24-67.1. Who to be registered only for Federal elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, but who has not paid all State poll taxes assessed or assessable against him as required in Section 20 of the Constitution of Virginia and § 24-67.

(b) The names of all persons who have been registered under paragraph (a) of this section, shall not be enrolled in the registration books referred to in § 24-67, but shall be enrolled in a separate registration book or other type of record, which shall be known as "Roll of Persons Registered for Federal Elections Only."

(c) Persons registered under paragraph (a) of this section shall be registered to vote only in primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States, and shall not by virtue of registration under this section be deemed to be registered to vote in any other general, special or primary elections held in this State.

COMMENT

Re: § 24-67.1

Section 24-67.1 is a new section providing an alternative method of registration for persons who wish to qualify to vote without payment of poll taxes but thereby limit their voting to Federal elections only.

Paragraph (a) parallels the conditions of registration contained in Section 20 of the Constitution of Virginia except the condition with respect to the payment of poll taxes, which is omitted.

Paragraph (b) provides for a separate roll book or other record to contain the names of all persons who register under § 24-67.1.

Paragraph (c) provides that all persons registered under § 24-67.1 shall be registered to vote in Federal elections only. For the reasons indicated in the comment to § 24-67, a person once registered under § 24-67.1 who later wishes to pay the poll tax and vote in all elections held in this State must register under § 24-67.

Suggested Amendment to § 24-78

§ 24-78. *Lists of persons registered to be posted and certified to clerk.*—It shall be the duty of the registrar within five days after each sitting to have posted at three or more public places in his jurisdiction *separate* written or printed lists of the names of all persons so admitted to registration, *under §§ 24-67 and 24-67.1, respectively*, and at the same time to also certify to the clerk of the circuit court of the county, or the corporation court of the city a true copy of such lists, and to have ** each* list posted on the day of the election at each place of voting in his jurisdiction, showing the names of such registrants residing in that precinct.

COMMENT

Re: § 24-78

Section 24-78 has been amended to provide for the posting and certification of both registration lists provided for in §§ 24-67 and 24-67.1.

Suggested Amendment to § 24-79

§ 24-79. *Clerk to record such lists.*—It shall be the duty of the clerk, upon receipt of such lists, to forthwith record in ** separate* suitable books, to be kept in his office for that purpose, the names of the registered voters so certified, in alphabetical arrangement.

COMMENT

Re: § 24-79

Section 24-79, as amended, will require clerks of court to maintain two books—one for the recordation of the names of all persons registered under § 24-67 and one for the recordation of the names of all persons registered under § 24-67.1.

Suggested New § 24-87.1

§ 24-87.1. *Designation of type of registration in certificate of transfer.*—Whenever any registrar shall issue a certificate of transfer under any provision of this chapter, he shall show on the certificate of transfer whether the person to whom the transfer was issued was registered under the provisions of § 24-67 or § 24-67.1. It shall be the duty of the registrar receiving the transfer, on its appearing to his satisfaction that the person to whom the certificate was issued has resided, prior to the next election, for thirty days in the election district to which he desires to transfer, to enter the name of such person on the registration books or other type of records of that precinct maintained for persons registered under the section shown on the certificate of transfer.

COMMENT**Re: § 24-87.1**

Section 24-87.1 provides that when a voter transfers his registration, his certificate of transfer shall indicate whether he is registered under § 24-67 or § 24-67.1. This is to insure that such voter will be placed on the proper registration list of his new precinct.

Suggested New § 24-119.2

§ 24-119.2 Applicability of certain sections.—*The provisions of §§ 24-68 through 24-119.1, inclusive, shall be applicable mutatis mutandis to persons registered under the provisions of § 24-67.1.*

COMMENT**Re: § 24-119.2**

This section makes all current registration laws applicable to § 24-67.1 registrants except where expressly stated to the contrary.

Suggested Amendment to § 24-120

§ 24-120. Treasurer to file lists with clerk.—The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least one hundred and * fifty-eight days before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city (1) *a list of all persons in his county or city who have filed certificates of residence under § 24-17.2, and (2) a separate list of all persons in his county or city who have paid, not later than six months prior to each of such dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which lists shall state the white and colored persons separately, if known, and shall be verified by the oath of the treasurer. The treasurer shall, in each such list, designate as a tribal Indian any person who requests to be so designated and who shall have furnished the treasurer with an affidavit, made by the Chief of any Indian tribe existing in this State, that such person is a member of such tribe and to the best knowledge and belief of the Chief is a tribal Indian as defined in § 1-14 of the Code of Virginia.*

COMMENT**Re: § 24-120**

Section 24-120 is amended to require the treasurer of each city and county to file with his clerk of court a list of all persons in his county or city, who have filed certificates of residence under § 24-17.2. This list is filed along with, but separately from, the list of persons who have paid their poll taxes (which latter is already required by § 24-120). Otherwise, § 24-120 is unchanged.

Suggested Amendment to § 24-121

§ 24-121. *Clerk to deliver copies of lists to sheriff or sergeant who shall post same; record of returns.*—The clerk within ten days from the receipt of the lists filed pursuant to § 24-120 shall make and certify a sufficient number of copies * of each list, and shall deliver one copy of each list for each voting place in his county or city and one copy of each list for each of the registrars in * his county or city to the sheriff of * his county or sergeant of * his city, whose duty it shall be to post one copy of each list without delay, and in no event later than five days after receipt thereof, at each of the voting places and to deliver one copy of each list to each of the registrars in the county or city and within ten days from the receipt thereof to make return on oath to the clerk as to the places where and dates at which such copies were respectively posted and delivered. The clerk shall record the returns in a book kept in his office for the purpose. However, no failure upon the part of the sheriff or sergeant to deliver a copy of * such lists or either of them to any registrar shall operate to invalidate an election.

COMMENT

Re: § 24-121

Section 24-121 has been amended to provide for the certification, delivery and posting of both lists furnished by the treasurer pursuant to § 24-120.

Suggested Amendment to § 24-122

§ 24-122. *Clerk to retain copies for public inspection.*—The clerk shall keep in his office for public inspection, for at least sixty days after receiving the lists filed pursuant to § 24-120, not less than ten certified copies * of each list.

COMMENT

Re: § 24-122

This section which relates to retention by the clerk of poll tax lists has been amended so as to make it applicable to both lists furnished by the treasurers pursuant to § 24-120, as amended.

Suggested Amendment to § 24-123

§ 24-123. *Correction of lists.*—Within thirty days after the lists * filed pursuant to § 24-120 have been so posted any person who shall have reason to believe that his name has been improperly omitted from either of such certified lists, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or

judge shall promptly hear and decide. If it be decided that the name was improperly omitted, the judge shall enter an order to that effect and the clerk of the court shall correct the list furnished him by the treasurer accordingly, and deliver a certified copy of such corrected list to the judges of election at the precinct at which such voter is registered. It shall be the duty of the treasurer to revise the lists within ten days after * they have been posted as aforesaid and to correct any omissions or clerical or typographical errors.

COMMENT

Re: § 24-123

This section which relates to correction of poll tax list has been amended so as to make it applicable to both lists furnished by the treasurers pursuant to § 24-120, as amended.

Suggested Amendment to § 24-124

§ 24-124. *Duty of clerk to deliver lists with poll books, and forward copies to Comptroller.*—The clerk shall deliver, or cause to be delivered, with the poll books at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy * of each list filed pursuant to § 24-120, and the poll tax list shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the poll tax list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the Comptroller, who shall charge the amount of the poll taxes stated therein to such treasurer, unless previously accounted for.

COMMENT

Re: § 24-124

This section which relates to delivery by the clerk to the judges of election has been amended so as to make the first sentence thereof applicable to both lists furnished by the treasurers pursuant to § 24-120, as amended, and to make the second sentence applicable only to the poll tax list furnished pursuant to § 24-120.

Suggested New § 24-128.1

§ 24-128.1. *Evidence of filing certificate of residence on transfer.*—In any case where a voter has been transferred from one city or county to another city or county, and has filed the certificate required by § 24-17.2, upon his request it shall be the duty of the treasurer of the county or city with whom the certificate was filed, to deliver to such person a certificate stating therein that such person filed in his office within the time prescribed by § 24-17.2 the certificate required by that section. Such certificate of the treasurer when submitted by the person

to whom it was issued to the judges of election at the precinct at which he offers to vote shall be conclusive evidence of the facts stated therein for the purpose of voting.

Any treasurer who shall give a false certificate so as to show that the certificate of residence has been filed six months before any election when in fact it has not been so filed shall be guilty of a misdemeanor. The granting of each false certificate shall constitute a separate offense.

COMMENT

Re: § 24-128.1

This section makes provision for voter who has moved since filing a certificate of residence to obtain a certificate from the treasurer showing that he filed a certificate of residence within the time prescribed by § 24-17.2.

2. *Suggested Severability Clause.*—If any part or parts, section, subsection, sentence, clause or phrase of this act or the application thereof to any person or circumstance is for any reason declared unconstitutional, such decisions shall not affect the validity of the remaining portions of this act which shall remain in force as if such act had been passed with the unconstitutional part or parts, section, subsection, sentence, clause, phrase or such application thereof eliminated; and the General Assembly hereby declares that it would have passed this act if such unconstitutional part or parts, section, subsection, sentence, clause or phrase had not been included herein, or if such application had not been made.

3. *Suggested Effective Clause.*—This Act shall become effective on the date that the 24th Amendment to the Constitution of the United States is ratified pursuant to Article V of the Constitution of the United States and the provisions of Senate Joint Resolution 29 of the Eighty-Seventh Congress of the United States of America at the second session, which Resolution passed the Senate on March 27, 1962, and passed the House of Representatives on August 27, 1962, or such Act shall become effective ninety days after the adjournment of the session of the General Assembly at which it is enacted, whichever shall occur later.

[fol. 139]

Copy

DEFENDANT'S EXHIBIT 36

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

COMMONWEALTH OF VIRGINIA

OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

March 11, 1964

Miss Waneta M. Buckley
General Registrar for Fairfax County
Fairfax, Virginia

My dear Miss Buckley:

This will acknowledge receipt of your letter of March 4, in which you make inquiry with respect to a situation where a person has been registered under § 24-67.1 of the Code—that is, without the payment of any poll tax—and subsequently qualifies for registration and actually registers under § 24-67 of the Code. You present a series of questions as follows:

"I. May a person who registers under § 24-67.1, for Federal elections only, re-register in a future year under § 24-67, provided his required poll taxes are paid, and thereby become eligible to vote in state and local elections?YES

"A. If the answer to I. is yes, what effect would this re-registration have on the previous registration? [See comments which follow]

"1. Should the registration for *Federal elections only* become void upon re-registration for all elections, could the records of the earlier registration be removed from the registration book and other files and filed in a specific file, set up for this purpose?YES

"2. If the registration for *Federal elections only* would *not* become void upon re-registration for all elections, must we carry such persons on our records in both the registration book for Federal elections *and* the registration book for all elections?

NO

[fol. 140] "a. Should such a 'dually-registered' person request a transfer to another county, would he be issued *two* transfers? If not, on which form should he be transferred? Also, please outline the disposition of his records after the transfer has been issued. [Answer to first question

NO

"b. If such a voter should move to another precinct in the county, would both of his registration records be transferred to a new precinct book?

NO

"(1) Would every change affecting such a voter—name-change, address-change, precinct change due to boundary line change, etc.—have to be made on both records?

NO

"c. If the name of a 'dually-registered' voter should be removed, for whatever reason, must the records of his two registrations be filed separately

NO.

"d. Should such a voter, in a future Federal election year, file a certificate of residence in lieu of paying his poll taxes, in which registration book would the Judges of election check to see if he was registered? Also, which record would be marked to indicate that he had voted? [See comments which follow]

"II. We have been advised by the State Board of Elections that voters who have registered under § 24-67, prior to December 1, 1963, cannot re-register under § 24-67.1.

[fol. 141] "A. Would this hold true even if the voter *asked* to have his previous registration cancelled and presented a written request for such cancellation?YES

"1. If the answer to A. is yes, would it be the responsibility of the General Registrar to deny such a request for cancellation?YES

"B. If a person who registered under Section 24-67, some years ago, and who has not paid any poll taxes for a number of years, should re-register under Section 24-67.1, *without advising the Registrar of his earlier registration*, would the re-registration be void? (Such persons would not necessarily intend to deceive the Registrar. We find that many people simply forget that they have ever registered.) [See comments which follow]

"1. If the answer to B. is yes, would it be the responsibility of the General Registrar to notify such a person that his registration under Section 24-67.1 is void because of his previous registration?"

I have indicated with either a "yes" or "no" the answer to most of your questions.

With respect to question IA d., it is obvious that unless the registrar already knows that the person filing the certificate has registered under § 24-67.1 and subsequently has registered under § 24-67 you would have to check the books in order to determine whether such person has registered under both methods. If such person has been registered under both methods, then his entitlement to vote is based [fol. 142] on § 24-67; if he has not been registered under both methods but only under § 24-67.1, then his entitlement to vote is under that section only.

Under the law and instructions which you have received, you are required to keep separate registration books showing who has been registered under both methods and as

indicated in my answer to your previous questions, whenever a person has registered under § 24-67 his registration under § 24-67.1 becomes useless and of no benefit to the person.

The thing to bear in mind is that under the election laws, as amended, whenever any person has been registered under § 24-67 such person remains registered in that category as long as he continues to be a voter in the State of Virginia and his registration under § 24-67.1, if any, should be ignored.

Specifically with respect to the second question in paragraph d., the registration record made under § 24-67 is the one that should be marked to indicate that the person has voted.

Whenever a person who has registered under § 24-67.1—that is, without the payment of poll tax—subsequently pays his poll taxes and qualifies for registration under § 24-67 and has so registered, then a notation should be made on the registration book or card where the person formerly registered to the effect that this person has re-registered under § 24-67 and that thereafter his entitlement to vote, insofar as registration is concerned, will be based solely upon his most recent registration.

Commenting upon your questions under II—your questions A and A-1—if any person has registered prior to December 1, 1963, or subsequent to December 1, 1963, under § 24-67 that person is a registered voter so long as he continues to maintain his domicile in the State of Virginia and he is not eligible to be registered under § 24-67.1 due to the fact that he can already vote in any election held in the State provided he complies with other provisions of the law. If such a voter, either in writing or verbally, should request his previous registration under § 24-67 to be cancelled, such request should be denied.

[fol. 143] With respect to II-B, if a person has been registered under § 24-67 at any time and his name has not been removed from the registration books under the purging method or by transfer, such person, of course, is en-

titled to transfer at this time if he has moved from the place where he originally registered. Under the Constitution and § 24-68 of the Code, every person who applies to register under either section is required to state therein whether he has ever voted and, if so, the State, county and precinct in which he last voted. If the person states that he last voted in Virginia in another county or city you should still take his application and determine whether or not he is still registered in the previous county and, if so, get his transfer. His application may not be processed and his name may not be placed on the registration book under § 24-67.1 if he is at that time a registered voter anywhere in this State. Of course, if he was registered in another State you have no problem.

In my opinion, a person's registration under § 24-67.1 is a nullity if he has overlooked the fact that he has previously registered. If you discover that such person has intentionally or nonintentionally stated that he has never voted in this State, you should not place his name on the registration book maintained for persons registering under § 24-67.1, but he should be required to get a transfer and, upon its delivery to you, his name would be placed on the registration book for persons registered under § 24-67. Such person would not be entitled to vote unless he filed the certificate in the time prescribed by § 24-17.2.

With respect to B-1, the last question in your letter, I assume that no answer is required in view of my answer to the other questions.

With best wishes, I am

Sincerely yours,

Robert Y. Button,
Attorney General

5-21.

[fol. 144]

Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANT'S EXHIBIT 37

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

March 17, 1964

Honorable F. B. Huber
Treasurer of Campbell County
Rustburg, Virginia

My dear Mr. Huber:

This will acknowledge receipt of your letter of March 13,
which reads as follows:

"Section 24-17.2, paragraph (b) provides that any person wishing to offer proof of continuing residence . . . shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate. . . ."

"Does this mean that treasurers should refuse to accept these certificates between the expiration of the six months prior to the election and October 1?"

"I also foresee that registrars may accumulate certificates left with them which were properly filled out within the prescribed time but may be sent by the registrar so as to reach the treasurer after the expiration of a date six months prior to the election. How should treasurers treat such certificates?"

[fol. 145] There is nothing in the statute that prevents a treasurer from accepting these certificates during the period between the deadline date in May and the first of October. However, the treasurer cannot place such person's name on the certified list provided for in § 24-120. The treasurer must certify that the persons whose names are shown on such list have filed a certificate as required by § 24-17.2 "not earlier than October first of the preceding year and not later than the day of May (the deadline date)."

Certificates that are filed between the dates in question—that is, between the deadline date in May and October first,—should, in my opinion, be marked so as to show the date of filing and preserved, at least, until the time has elapsed when certificates will no longer be a basis for qualification to vote.

With best wishes, I am

Sincerely yours,

Robert Y. Button
Attorney General

5-21

[fol. 146]

Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 38

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

March 17, 1964

Honorable R. Crockett Gwyn, Jr.
Member, House of Delegates
Marion, Virginia

My dear Mr. Gwyn:

This is in reply to your letter of March 13, which reads as follows:

"There seems to be some confusion among the voters and the Electoral Board of Smyth County as to the filing of the certificate of residence in order to vote in the Congressional election to be held this Fall.

"Will you please advise me if the certificate is necessary to be filed by a voter when the voter is qualified to vote with the exception of paying his poll tax six months prior to the election, in other words, he is duly qualified to vote only he does not pay his poll tax; and

"A young voter becoming of age since January 1, 1963 and does not want to pay a poll tax, does this person have to file a certificate of residence in order to vote; also.

"A person over 21 years of age who has never registered or paid any poll tax or voted, does this person have to file a certificate of residency six months prior to the election in order to vote in the Congressional election this Fall."

[fol. 147] I assume your first question relates to a person who is registered under § 24-67 of the Code, but has decided to discontinue the payment of poll taxes. If this is correct, such person must file the certificate six months prior to the November election in order to be able to vote in elections for President, U. S. Senator and Member of Congress. Such person would not be entitled to vote in State and local elections.

Your question (2), I assume, relates to a person who became 21 in 1963 and was registered without the payment of the poll tax. If such a person desires to vote in federal elections only in 1964, he will have to file the certificate six months prior to the November election.

The answer to your third question is in the negative. The certificate is not required for elections held during the year in which a person registers. However, the certificate will be required for all succeeding years in which such person wishes to vote.

With best wishes, I am

Sincerely yours,

Robert Y. Button
Attorney General

5-21

[fol. 148] CLERK'S CERTIFICATE (omitted in printing).

[fol. 149]

SUPREME COURT OF THE UNITED STATES

No. 360, October Term, 1964

A. M. HARMAN, JR., ET AL., Appellants,

VS.

LARS FORSSENIUS, ET AL.

Appeal from the United States District Court for the
Eastern District of Virginia.

ORDER NOTING PROBABLE JURISDICTION—October 12, 1964

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted and the case is placed on the summary calen-
dar.

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IN THE

Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., *Appellants*,

v.

LARS FORSSENIUS, *Appellee*.

and

A. M. HARMAN, JR., ET AL., *Appellants*,

v.

HORACE E. HENDERSON, *Appellee*.

JURISDICTIONAL STATEMENT

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August 7, 1964

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IN THE
Supreme Court of the United States

October Term, 1964

No. _____

A. M. HARMAN, JR., ET AL., *Appellants*,

v.

LARS FORSSENIUS, *Appellee*.

and

A. M. HARMAN, JR., ET AL., *Appellants*,

v.

HORACE E. HENDERSON, *Appellee*.

JURISDICTIONAL STATEMENT

Appellants appeal from the Final Order of the United States District Court for the Eastern District of Virginia, Richmond Division, entered on May 29, 1964 (attached hereto as Appendix I), declaring unconstitutional certain portions of Virginia's recent amendments of its registration and voting laws. These amendments were enacted (i) to give effect, in specified federal elections, to the new 24th Amendment to the Constitution of the United States, and (ii) to retain in all state and local elections the poll tax required by the Constitution of Virginia. Such election law amendments are found in the Acts of the General Assembly of Virginia, Extra Session, 1963 (the Special Acts), excerpts from which are attached hereto as Appendix III.

The Final Order appealed from held invalid under the Constitution of the United States the portions of the Special Acts which *may* require the filing of a certificate of continuing residence in advance of the general election as a prerequisite to the right of persons otherwise qualified to vote in elections for certain federal officers. Such Final Order also restrained and enjoined the Appellants from requiring compliance by an elector with such portions of the Special Acts. The Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that the appeal presents substantial and serious questions.

I. OPINION BELOW

The opinion of the District Court for the Eastern District of Virginia, Richmond Division, is not yet reported. A copy of this opinion is attached hereto as Appendix II.

II. JURISDICTION

These alleged class actions, consolidated by order of the court below, were brought to have all of the Special Acts declared unconstitutional, pursuant to 28 U.S.C. § 2201, and to enjoin the Appellants from enforcing, executing or administering such Acts, or doing any act thereunder, including without limitation, receiving any result of elections or issuing certificates of election for any election of federal officers conducted under the said Acts. Jurisdiction under 28 U.S.C. § 1343(3) was pleaded and admitted, and a three-judge District Court, as required by 28 U.S.C. §§ 2281, 2284, was convened. The Final Order of the District Court, which declared unconstitutional only the aforementioned portions of the Special Acts with respect to proof of residence in Federal elections, and enjoined enforcement of only

such portions, was entered on May 29, 1964, and Notice of Appeal was filed in that court on June 11, 1964. Jurisdiction of the Supreme Court to review the Final Order on direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of this Court: *England v. Louisiana State Bd. of Medical Examiners*, 375 U. S. 411, 415 (1964); *Harrison v. NAACP*, 360 U. S. 167, 170 (1959); *St. John v. Wisconsin Employment Relations Bd.*, 340 U. S. 411, 414 (1951).

III. STATUTES INVOLVED

The statutes involved are Chapter 1 of the Acts of the General Assembly of Virginia, Extra Session, 1963, and Section 24-17.2 of the Code of Virginia of 1950 (Supp. 1964), added by Chapter 2 of the Acts of the General Assembly of Virginia, Extra Session, 1963, which were held unconstitutional by the court below. Such specified portions of the Special Acts are hereinafter designated as the Statutes Involved. Because of their length, the Statutes Involved are not set out here verbatim. Their text is set forth on pages 13-15 and 17-19 of Appendix III to this Statement, which also contains other relevant excerpts from the Special Acts.

IV. QUESTIONS PRESENTED

1. Did the court below err in holding that the Statutes Involved, which may require a voter in an election for federal officers to prove residence by filing a certificate of continuing residence in advance of the election, thereby create a "qualification" for electors of the Congress not demanded of electors of the House of Delegates, the most numerous branch of the Virginia legislature, and are thus repugnant to Article I, § 2 and Amendment 17 of the Constitution of the United States?

2. Did the court below err in issuing on the authority of Article I, § 2 and Amendment 17 of the Constitution of the United States a general injunction against requiring compliance by an elector with the Statutes Involved in elections for President and Vice-President of the United States?

3. Should the court below have stayed the proceedings in these cases pending an interpretation of the Special Acts by the courts of Virginia in conformity with the doctrine of abstention?

4. Should the court below have sustained (i) the motions to dismiss the complaints in both cases for failure to join indispensable parties, or (ii) the motion to dismiss in the *Henderson* case for the plaintiff's want of standing to sue?

V. STATEMENT OF THE CASE

Since the adoption of its Constitution of 1902, Virginia has required, as a qualification for voters and new registrants in all elections, payment in person in advance of elections of the state capitation or poll tax. See *Va. Const.* §§ 18, 20. The poll tax (used for educational purposes) is the only state-wide tax assessed annually against all state residents, and it is payable by such residents to the local revenue official of the political subdivision in which they reside. See *Va. Const.* §§ 173, 38.

At the same time payment of the poll tax became a voter qualification, permanent registration became an institution in Virginia. Once a voter has registered under the system that presently obtains, he is registered for life, and his name will ordinarily remain upon the registration rolls even after he has abandoned his state or municipal residence. Obviously, to prevent fraudulent voting by persons once registered who were no longer residents, a means of checking the

continuing state and municipal residence qualifications of registered persons was necessary. The list of persons who, in their respective localities, had paid their state capitation taxes to qualify themselves to vote provided just such a means. See Excerpts from Address of Governor A. S. Harrison to the General Assembly of Virginia, Extra Session, 1963, Senate Doc. No. 1, attached hereto as Appendix IV.

When ratification of Amendment 24 to the Constitution of the United States, which absolutely prohibits the states from making payment of a poll tax a mandatory prerequisite for voting in certain enumerated federal elections, became imminent, it appeared that two fundamental changes in Virginia's election laws were necessary if such laws were to comply with both the Constitution of the United States and the Constitution of Virginia. First, a dual system of registration and voting, with the poll tax in effect for state and local elections and inoperative for federal elections, had to be established to clarify the effect of the Amendment upon the existing system. Second, a new means of checking the residence qualifications of federal electors who chose not to pay their poll taxes had to be found.

The Governor accordingly convened an Extra Session of the Virginia General Assembly, which proceeded to enact the Special Acts, which went into effect on February 19, 1964. On February 20, 1964, the Appellees instituted these suits, which were consolidated by an order of the court below entered on March 4, 1964.

As has previously been mentioned, these suits were instituted by the Appellees as class actions to have the Special Acts in their entirety declared unconstitutional, and to have the Appellants enjoined from enforcing any part of them. The Appellees are both registered voters, but while the Appellee Henderson has paid his poll taxes in the manner prescribed by the Constitution of Virginia and the Special Acts,

and thus cannot be denied his vote in any election held in 1964, the Appellee Forssenius in 1964 has neither paid his poll taxes nor filed the certificate of residence as provided in the Special Acts. The Appellants are the members of the Virginia State Board of Elections, the Treasurer of Roanoke County, Virginia, and the Director of Finance in Fairfax County, Virginia.

As has previously been mentioned also, the court below held unconstitutional only the Statutes Involved and generally enjoined the Appellants from enforcing them against any elector by the Final Order entered on May 29, 1964. Effectiveness of the Final Order was, however, suspended for thirty days so that the Appellants might seek a further stay from this Court or a Justice thereof during the pendency of their appeal. An Application for a Stay of Order was filed by the Appellants with Mr. Chief Justice Earl Warren on June 12, 1964, and was denied on June 24, 1964.

VI. QUESTIONS ARE SUBSTANTIAL

The Appellants respectfully submit that the questions presented by this appeal are so substantial as to require full consideration by this Court, with briefs on the merits and oral argument, for their resolution. This would be so even if the opinion of the court below were not, as the Appellants believe, clearly erroneous in so many fundamental respects.

A.

Questions are Novel and Important to Virginia and Other States as Well.

The questions are both novel and important because their resolution will require a comprehensive interpretation, unprecedented in the history of this nation, of a portion of the original Constitution—Article I, § 2 (and the identical lan-

guage of Amendment 17) and Article II, § 1—and of also its most recent amendment, Amendment 24, as those three provisions relate to the respective powers, and the limitations thereon, of the state and federal governments with regard to elector qualifications. A decision of these questions will be of importance generally throughout the country and it will be of particular importance not only to the State of Virginia, but also to the other five states—Alabama, Arkansas, Massachusetts, Mississippi and Texas—in which payment of a poll tax is in one way or another a part of the fabric of the election laws. It is hardly necessary to add that the questions presented are of great concern to the Virginia public, since they involve the validity of measures designed to preserve fair elections and prevent irregularity at the polls.

The foregoing reasons show generally the substantiality of the questions presented; the following reasons demonstrate their substantiality specifically.

B.

The Court Below Erred in Holding That the Certificate of Residence is an Additional Qualification for Voting.

To hold that the certificate of residence provided for in Section 24-17.2 of the Statutes Involved is a qualification of electors of the Congress not required of electors of the Virginia House of Delegates, and that it is therefore repugnant to Article I, § 2 and Amendment 17, the court below must necessarily have concluded first, that the certificate itself is a qualification, and second, that it is mandatory for Congressional electors. The Appellants believe that the lower court erred in reaching both of these conclusions.

It is perhaps noteworthy that the court below was unable to find any precedent for its conclusion that the certificate

is a qualification in the constitutional sense. This may be so because all the pertinent cases are precisely to the contrary. See cases collected in Annot., 14 A.L.R. 260 (1921). Two cases which are particularly in point are *Southerland v. Norris*, 22 Atl. 137 (Md. 1891) and *Pope v. Williams*, 56 Atl. 543 (Md. 1903), *aff'd*, 193 U. S. 621 (1904). These cases held that legislative enactments requiring certain persons to register their intent to become or remain residents well in advance of election day did not create qualifications in addition to those found in the State Constitution, but merely established the methods of *proving* residence.

In the *Southerland* case, the statute in question raised a conclusive presumption that one removing from the state, who failed to make an affidavit before a clerk of court that his residence was not being abandoned but would be resumed, had abandoned his residence in Maryland. The court said, 22 Atl. at 138:

The section in question does not purport to, and does not in fact, add anything to the qualifications of . . . residence as they are fixed in the constitution. It deals exclusively with the evidence by which one of these qualifications—that of residence—shall be proved. . . .

Similarly, in the *Pope* case, the pertinent statute provided that persons coming into the state could prove their intent to become residents only by registering it on a public record book at least one year in advance of the election. The Maryland court again declared, 56 Atl. at 544:

Nor does the statute impose qualifications for voting other than those prescribed by the constitution. It leaves those qualifications precisely as they were before. It deals exclusively with the evidence necessary to estab-

lish residence, by providing what the evidence of residence shall be.

The court below attempted to distinguish these cases on the ground that they are not "authority for saddling a voter in a Federal election, in order to maintain his status, with a step [qualification] beyond that required of a voter in a State election." The Appellants agree, and this aspect of the case will be discussed later. But the cases cited were not intended to be used as authority for anything other than the proposition that requiring a voter to *affirm his residence* in advance of an election is not adding a qualification to those enumerated in the Virginia Constitution.

The lower court reasoned that the certificate of residence must be a qualification because of the "obvious fact" that its alternate, payment of a poll tax, has no probative value on the question of residence. The Appellants are at a loss to see how the court found this "obvious fact." The only part of the record dealing with the evidentiary effect of payment of a poll tax is Governor Harrison's Address, in Appendix IV, which in every respect contradicts the court's finding. The Constitution of Virginia, Section 173, declares that the poll tax is assessable only against residents, and it is plainly irrational to suppose that anyone other than a resident would pay it voluntarily. The Virginia Supreme Court of Appeals, as have many other courts and at least one state legislature, has found that payment of a poll tax does, in fact, have an important bearing on residence questions. See *Cooper's Adm'r v. Commonwealth*, 121 Va. 338, 341, 93 S.E. 680 (1917); *Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945); *Chase v. Chase*, 29 Atl. 553, 555 (N. H. 1891); *Clark v. Stubbs*, 131 S.W. 2d 663 (Tex. Civ. App. 1939); compare *Mass. Gen. Laws Ann.* ch. 51, § 43 (1958).

The second necessary finding of the lower court—that the certificate of residence is *mandatory* for the federal voter—is simply not in accord with the plain wording of the Statutes Involved. The certificate is only one of two *permissively alternative means* by which the federal voter—or any voter, for that matter—may prove continuing residence. The other remains, as it always has been, payment of a poll tax. If the federal voter chooses to perform his civic responsibilities, by paying his taxes promptly, he need never file a certificate of residence at all.

Thus, the Appellants submit that the lower court's holding that the certificate of residence is an unlawful qualification, instead of what Section 24-17.2 of the Statutes Involved says it is: "proof of residence," is clearly erroneous.

C.

The Court Below Erred in Applying Article I, § 2, and the 17th Amendment to Presidential Elections.

The Appellants urge that it was manifestly improper for the court below to enter an order applicable to elections for President and Vice-President of the United States. There is no legal foundation in the opinion or the law generally for an order of this breadth.

If it is assumed that the certificate of residence is a qualification for the electors of Congress not required of electors of the Virginia House of Delegates, this would render it unconstitutional in *Congressional* elections for repugnancy to Article I, § 2 and Amendment 17, just as the court below held. But Article I, § 2 and Amendment 17 do not extend beyond Congressional elections. There is nothing in the Constitution of the United States requiring that the qualifications of voters for the President and Vice-President be the same as the qualifications for voters for any other officer,

On the contrary, the Constitution provides solely that the President and Vice-President are to be elected by the Electoral College, see Amendment 12, whose members are appointed by each state, "in such Manner as the Legislature thereof may direct." Article II, § 1.

It is therefore clear that since the lower court's opinion was bottomed solely upon Article I, § 2 and Amendment 17, the opinion must leave the certificate of residence operative for voters in Presidential elections. Consequently, even if the opinion of the court below had established a legal basis for an order enjoining the Appellants from requiring a certificate of residence of electors of the Congress, it provides no legal basis whatever for an order similarly enjoining the Appellants from requiring the certificate from popular electors of the President and Vice-President.

D.

The Court Below Should Have Applied the Doctrine of Abstention in Cases Involving Voter Qualifications Under the Constitution of Virginia.

In view of the many decisions of this Court applying the doctrine of abstention, and in view of the unmistakable intent of the Constitution of the United States, it was clearly erroneous for the court below to overrule summarily the Appellants' motions for a stay of proceedings pending an interpretation of the Special Acts by the Virginia courts.

These cases were instituted immediately after the Special Acts went into effect and, of course, before there was any opportunity for construction by the Virginia courts. Compare *Albertson v. Millard*, 345 U. S. 242 (1953). If a Virginia court should find that the certificate of residence requirement of the Special Acts is an independent or super-added qualification in addition to those found in the Virginia

Constitution, it would concededly hold the requirement invalid as a matter of state law, and a crucial federal constitutional issue would accordingly disappear from the case. See *Spector Motor Serv., Inc. v. McLaughlin*, 323 U. S. 101, 105 (1944).

It is difficult to conceive of a more important and valid concern of a state and its people than the orderly administration of elections and the prevention of fraud and irregularity at the polls. Compare *Stainback v. Mo Hock Ke Lok Po*, 336 U. S., 368, 383 (1949). The lower court's Final Order has worked a "disruption of an entire legislative scheme of regulation," *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, U. S. 84 Sup. Ct. 1293, 12 L. Ed. 2d 350 (1964), and it has done so needlessly, since the Virginia Declaratory Judgments Act provides an "expeditious avenue," *Harrison v. NAACP*, 360 U. S. 167, 178 (1959), by which the Appellees, with full protection of all their federal constitutional claims, could have presented the issues raised below to the proper Virginia tribunals, which are unquestionably far better equipped than the lower court to unravel the skeins of local law and administrative practices in which the Appellees' claims are entangled.

These cases are not in the least similar to *Davis v. Mann*, U. S. 84 Sup. Ct. 1453, 12 L. Ed. 2d 609 (1964), except that both involve elections and voting. The relevant state constitutional and statutory provisions were said in *Davis* to be "clear and unambiguous." Here the question of validity of the Statutes Involved under the *Virginia* Constitution is far from clear, as demonstrated by the fact that the Appellees devoted two-thirds of their opening brief in the court below to the argument of this pure question of state law. The court below chose to ignore the state question and to decide that the Statutes Involved are "qualifications"

under the United States Constitution, although it is perfectly clear (and has been for over 150 years) that such Constitution does not *create* such qualifications but only *adopts* those created by the states in the exercise of a power limited at the federal level only by Amendments 15, 19 and 24.

Thus, it is apparent that there remains in these cases a threshold question of state law that is novel, difficult and still unanswered—but possibly dispositive of all the issues herein. All the “concerns which have traditionally counseled a federal court to stay its hand,” *Martin v. Creasy*, 360 U. S. 219, 224 (1959), exist in these cases in a marked degree, and the lower court should therefore have abstained.

But in addition to the presence of the aforementioned concerns, there is another reason, of constitutional dimensions, why the court below erred in refusing to abstain. According to the earliest great commentaries on the Constitution, to numerous decisions of this Court and to the plain wording of the provisions themselves, Article I, § 2 (and the identical language of Amendment 17) of the Federal Constitution establish the *exclusive* power of the states in matters of voter qualifications for electors of the Congress. *E.g.*, *Minor v. Happersett*, 88 U. S. (21 Wall) 162, 171 (1875); *Ex parte Yarbrough*, 110 U. S. 651, 663 (1884); *Pope v. Williams*, 193 U. S. 621, 633 (1904); *The Federalist*, No. 52, at 341-42 (Modern Library ed.) (Hamilton or Madison); 1 *Story, Constitution* §§ 583-86 (4th ed. Cooley 1873); *Black, American Constitutional Law* 535-37 (2d ed. 1897); see *Breedlove v. Suttles*, 302 U. S. 277 (1937); *Lassiter v. Northampton County Bd. of Elections*, 360 U. S. 45 (1959). To be sure, once voter qualifications are fixed by the states, they become, through adoption by the same federal constitutional provisions, part of the Constitution itself, see *Ex parte Yarbrough*, *supra*; and thus,

once a voter is qualified under state law, his right to vote for members of the Congress becomes a federally protected right, see *United States v. Classic*, 313 U. S. 299, 314-15 (1941). But the preliminary process of fixing voter qualifications unquestionably is purely and wholly of a matter of state law: constitutional, statutory (if voter qualifications are not set out in the state constitution) and decisional (if the question should arise whether or not a constitutional or statutory provision establishes a qualification). See *Ventre v. Ryder*, 176 Supp. 90, 97 (W. D. La. 1959).

Federal authority is likewise excluded by the Constitution from the matter of establishing the qualifications of voters for electors of the President and Vice-President, where such electors are chosen by popular vote. Article II, § 1 entrusts this matter wholly and exclusively to the states. See e.g. *McPherson v. Blacker*, 146 U. S. 1, 27 (1892); *In re Opinion of the Justices*, 107 Atl. 705, 706 (Me. 1919); *McCrary, Elections* § 38 (4th ed. 1897).

Thus, the Federal Constitution by necessary implication, gives exclusive competence to the state courts to decide the question whether a state legislative enactment creates a qualification or not, and the same constitution must therefore effectively deprive the federal courts of competence to decide that question. It is quite plain that Article I, § 2, Article II, § 1 and Amendment 17 prevent Congress, the federal legislature, from enacting legislation to establish voter qualifications, and it is likewise plain by parity of reasoning that these same provisions must, when the issue is presented, prevent the federal courts from establishing qualifications, as the court below did, by judicial decree. And if these provisions do not absolutely prohibit the federal courts from deciding questions of voter qualifications, surely they indicate most forcefully that the state courts are

the proper tribunals for the resolution of such questions.

Therefore, the court below erred in denying the Appellants' motions to stay, since all the traditional reasons compelling abstention are present, and additionally because the Constitution requires that the very question decided by the court below be submitted to the courts of Virginia. Due respect for the powers of the states in this area, which antedate the Constitution itself and which Article I, § 2, Article II, § 1 and Amendment 17 were intended to preserve intact, demands nothing less.

E.

The Court Below Erred in Overruling the Appellants' Motions to Dismiss.

The court below overruled the Appellants' motions to dismiss in both cases for failure to join indispensable parties, namely the registrars and other local election officials of Roanoke and Fairfax Counties where the Appellees reside. Its reasoning was that since it could halt the certificates of residence at their source, as it did, by forbidding the State Board of Elections and the local revenue officials who had been joined from specifying the form of the certificates and from receiving them, all indispensable parties were before the court.

If the issue of indispensability were to be determined by the nature of the relief eventually *granted*, there could be no substantial question as to the propriety of the lower court's holding. But this is not the test; the test is rather whether an order granting the relief *desired* would require the party not joined to take action or refrain from taking it, or, to say the same thing, whether such an order can expend itself solely upon the persons before the court: See *Williams v. Fanning*, 332 U. S. 490, 493, 494 (1947); 2 *Barron & Holtzoff, Federal Practice & Procedure* § 515 (1961).

Under this test there is a substantial question in these cases as to the propriety of the action of the lower court in summarily overruling the Appellants' motions to dismiss. It will be remembered that the Appellee's complaints prayed for a general injunction against enforcement of all of the Special Acts—including those parts thereof dealing with voter registration, whose constitutionality was argued at great length below. None of the Appellants have any authority at all over the activities of local registrars, who were not joined, other than authority to supervise them so as to promote uniformity of practice, purity and regularity in all elections. See *Va. Code* § 24-25. The order prayed for, which would necessarily include an injunction of registration under the Special Acts, could accordingly not expend itself upon only those persons before the court, and indispensable parties were therefore not joined.

The rule fashioned by the court below leads to erosion of the concept of indispensability, for in many cases the relief eventually granted could be tailored to the capacity or authority of the parties actually before the court, and it would accordingly never be necessary to join other persons. The Appellants submit that this Court should correct the potentially disruptive procedural error of the lower court and reaffirm the traditional test of indispensability.

In good faith, and with ample authority to support them, the Appellants moved the court below to dismiss the complaint of the Appellee Henderson on the ground that, as he was a registered, qualified voter and had proved his residence by paying his poll taxes, he could not and would not be denied his ballot under color of the Special Acts in any 1964 election and he therefore lacked standing to sue. The lower court did not pass on the motion either at the hearing or in its opinion, and counsel for Appellants had to assume that they could consider the motion denied.

Although the Appellants concede that the Appellee Forssenius has standing to sue, and that the same issues were raised in his complaint as were raised in the complaint of the Appellee Henderson, nevertheless there is a substantial question as to the propriety of the lower court's treatment of the motion to dismiss Henderson's complaint. Since Henderson is neither harmed nor threatened with immediate harm by any of the Special Acts he attacks, it is elementary that he lacks standing to call their constitutionality into question. *E.g.*, *Poe v. Ullman*, 367 U. S. 497 (1961); *Alabama State Fed'n. of Labor v. McAdory*, 325 U. S. 450 (1945); *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288 (1936); *Id.* at 346-48 (Brandeis, J., concurring); *Tyler v. Judges of Court of Registration*, 179 U. S. 405 (1900); *Marye v. Parsons*, 114 U. S. 325 (1885).

Important procedural rules should not be ignored on the sole ground that they are not dispositive in a case to which they apply. This Court should reaffirm the rules with respect to standing to sue by dismissing the Henderson case even though the same issues are present in the Forssenius case.

VII. CONCLUSION

It is submitted that the questions presented by this appeal as to the propriety of the lower court's decision on the merits and the scope of the Final Order, and as to the propriety of the lower court's denial of the Appellants' motions to stay

proceedings and to dismiss, are substantial for the foregoing reasons, and that they require for their resolution plenary consideration by this Court, with briefs on the merits and oral argument.

Respectfully submitted,

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PROOF OF SERVICE

I, Richard N. Harris, one of the attorneys for the Appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 7th day of August, 1964, I served copies of the foregoing Jurisdictional Statement on the several Appellees hereto by mailing same in duly addressed envelopes, with first-class postage prepaid to their respective attorneys of record as follows: H. E. Widener, Jr., Esq., Widener & Widener, Attorneys at Law, Reynolds Arcade Building, Bristol, Virginia; David H. Frackelton, Esq., Attorney at Law, Reynolds Arcade Building, Bristol, Virginia; L. S. Parsons, Jr., Esq., Parsons, Stant & Parsons, Attorneys at Law, Maritime Tower, Norfolk, Virginia; J. L. Dillow, Esq., Dillow & Andrews, Attorneys at Law, Giles Professional Building, Pearisburg, Virginia; John N. Dalton, Esq., Dalton, Poff & Turk, Attorneys at Law, First & Merchants National Bank Building, Radford, Virginia; and to Bentley Hite, Esq., Attorney at Law, First National Bank Building, Christiansburg, Virginia. Copies thereof were also mailed, in duly addressed envelopes, with first-class postage prepaid to: Ralph G. Louk, Esq., Commonwealth's Attorney for Fairfax County, Fairfax, Virginia, counsel of record below for the defendant, L. M. Coyner, and to Edward H. Richardson, Esq., Commonwealth's Attorney for Roanoke County, Roanoke, Virginia, counsel of record below for the defendant, James E. Peters.

RICHARD N. HARRIS
Assistant Attorney General

APPENDIX I
IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT RICHMOND

Civil Actions
Nos. 3897 and 3898

Lars Forssenius, *Plaintiff*

v.

A. M. Harman, Jr., et al., *Defendants*

and

Horace E. Henderson, *Plaintiff*

v.

A. M. Harman, Jr., et al., *Defendants*

FINAL ORDER

Upon consideration of the pleadings, the stipulations of the parties, as well as the exhibits offered in evidence, and the argument of counsel thereon, the Court declares, for the reasons stated in its opinion this day filed, that the portions of Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963, which require the filing of a certificate of continuing residence six (6) months before a general election as a prerequisite to the right of a person

otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, are invalid because in violation of the Constitution of the United States; and accordingly it is

ADJUDGED, ORDERED and DECREED that the defendants herein, their agents, servants and employees be, and each of them is hereby, restrained and enjoined from requiring compliance by an elector with the said part of the said Acts of the General Assembly.

It is further ORDERED that the effectiveness and execution of the foregoing restraint and injunction be suspended for a period of 30 days from this date to allow the defendants, if they be so advised, to seek a further stay of this order from the Supreme Court, or one of the Justices thereof, during the pendency of any appeal therefrom, and this suspension is allowed without bond but shall cease upon the expiration of the said 30-day period unless it is enlarged as aforesaid upon appeal.

/s/ ALBERT V. BRYAN
United States Circuit Judge

/s/ WALTER E. HOFFMAN
United States District Judge

/s/ JOHN D. BUTZNER, JR.
United States District Judge

May 29th, 1964.

APPENDIX II

(Argued May 12, 1964)

Decided May 29, 1964)

Before Bryan, Circuit Judge, and Hoffman and Butzner,
District Judges.

H. E. Widener, Jr., Esquire, Bristol, Virginia; David H. Frackleton, Esquire, Bristol, Virginia; L. S. Parsons, Jr., Esquire, Norfolk, Virginia; J. L. Dillow, Esquire, Pearisburg, Virginia; John N. Dalton, Esquire, Radford, Virginia; Bentley Hite, Esquire, Christiansburg, Virginia, attorneys for the plaintiffs.

Robert Y. Button, Esquire, Attorney General of Virginia; Richard N. Harris, Esquire, Assistant Attorney General of Virginia; E. Milton Farley, III, Esquire, Richmond, Virginia; Joseph C. Carter, Jr., Esquire, Richmond, Virginia; Edward H. Richardson, Esquire, Commonwealth's Attorney of Roanoke County, Salem, Virginia; Ralph G. Louck, Esquire, Commonwealth's Attorney of Fairfax County, Fairfax, Virginia, attorneys for the defendants.

ALBERT V. BRYAN, *Circuit Judge*:

UNANIMOUS OPINION

Since the adoption of the 24th Amendment forbidding exaction of a poll tax as a prerequisite to voting in a Federal election,* Virginia has enacted an additional qualification for the Federal voter. If he has not paid the poll tax still required in State elections, he must file within the same time a certificate of continuing residence. No such certificate is

* An election for a State or local office we shall term a State election and a voter therein a State elector; an election for a Federal office will be a Federal election, and a voter therein a Federal elector.

demanded of a voter in an election for the Virginia House of Delegates. By Article I, Section 2 and by the 17th Amendment of the United States Constitution, it is ordained that electors choosing a Representative or Senator in Congress "shall have the qualifications requisite for electors of the most numerous branch [the House of Delegates] of the State Legislature(s)." Thus, the Virginia statutes—1963 Acts—imposing the extra test upon the Federal elector contravenes, as this suit now asserts, these constitutional provisions.

The plaintiffs further assert that the ultimate effect of the 24th Amendment is to rescind the power of the State to insist upon the payment of a poll tax as a condition for voting in the election of members of the House of Delegates. We do not agree.

These propositions were posed by the two complaints here, one of Lars Forssénius and the other of Horace E. Henderson, both citizens of the United States and of the State of Virginia having the requisite residence to vote, and each suing for himself and others as a class similarly situated. The suits have been consolidated and are now treated as a single cause.

The 1963 Acts were adopted at an extra session of the Virginia Legislature in anticipation of the promulgation of the 24th Amendment, which occurred February 4, 1964. Prior thereto, the Constitution of Virginia, in Article II, and the statutes of the State, Code §§ 24-67 and 24-17, provided for the registration and voting of electors in all elections, both Federal and State, primary and general. In brief, the requirements were: age of not less than 21 years, residence within the State for one year and of the city or county six months and the payment "at least six months prior to the election . . . to the proper official all State poll

taxes [\$1.50 annually] assessed or assessable against him for three years next preceding such election." Registration is required only once. Each election year, however, there is compiled a new list of poll taxes paid.

Amendment 24, so far as pertinent, provides in § 1:

"... The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."

Obviously, the effect of this amendment was to annul in Virginia's Constitution and statutes payment of a poll tax as a condition for registering and voting in primary and general Federal elections. *Guinn v. United States*, 238 U. S. 347, 362 (1915); *Ex parte Yarbrough*, 110 U. S. 651, 655 (1884).

The 1963 Acts directed a division of the registration and voting qualification record into two classes, one for Federal elections and another for State elections. For this purpose Code § 24-67 providing for registration, and § 24-17 for voting, were each amended and enlarged. No change was made with regard to State elections. These changes inserted for participation in Federal elections were twofold: (1) the withdrawal of the poll tax payment both for registration and for voting, and (2) the addition for voting of this requirement in Code § 24-17.2, set out in part below:

"Proof of residence required; how furnished.—(a) No person shall be deemed to have the qualifications of residence required... [by the Constitution and statutes of Virginia] in any calendar year subsequent to that in which he registered... and [he] shall not be en-

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titled to vote in this State [in any Federal election] . . . unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by . . . [payment of the customary poll taxes]. Proof of continuing residence may only be established by either of such two methods.

“(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

“‘I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

.....
Witnessed:

.....
or

Subscribed and sworn to before me this day of
....., 19.....

.....
Notary Public’

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

“(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.”

As a result of the new statutes a citizen after registration may vote in both Federal and State elections if he has satisfied the assessable poll tax; if he has not paid the tax he cannot vote in any State election but he may vote in a Federal election upon filing the certificate of residence.

I. The pivotal point before us is whether or not the certificate of residence is simply an instrument evidencing residence, that is, merely proof of the residence qualification; or a separate qualification put upon the Federal voter, or at least an enlargement of the residence qualification, which in either event is not placed on the State voter. Concededly, residence is a qualification properly required for both Federal and State suffrage. *Lassiter v. Northampton Election Bd.*, 360 U. S. 45, 51 (1959).

In this determination, we reject the abstention argument pressed by the defendants: that the significance of the certificate and its character as used in the 1963 Acts is a State question, and we should stay our hand until the courts of Virginia are afforded the opportunity to interpret the term. Whether a requirement of State law constitutes a discrimination against the Federal voter, either by a separate or a disproportionate qualification, within the meaning of Article I, Section 2 and the 17th Amendment of the Federal Constitution is immediately a Federal question. No matter the careful and scrupulous study of the State courts, the de-

termination is one manifestly within the framework of the Federal Constitution and so must be the decision of the Federal court. In *Ex parte Yarbrough*, *supra*, 110 U. S. 651, 663 the Court said:

"But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

* * *

"The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the *same* persons shall vote for members of Congress in that State." (Accent added)

Because of the 1963 Acts, with the poll tax removed from Federal elections, the electors in the two elections do not enjoy equal eligibility. The Federal elector must file a witnessed or notarized certificate of residence, not only declaring himself a current resident of Virginia, but also that he has been a resident since his registration. After giving the street number of his residence, he must give assurance of his intention not to remove from the city or county prior to the next general election.

On the other hand, remittance of the poll tax by the State elector need not be accompanied by any express representation whatsoever of present residence. No affirmative proof has to be adduced that it has continued uninterrupted since his original registration. Thus the State elector's residency is accepted as unbroken from the date of his registration. No such presumption is accorded the Federal voter. A posi-

tive and yearly renewed guarantee of residence is necessary for casting a Federal vote. True, a State elector may be challenged at the polls for insufficient residence, but this is a rare and optional practice.

These differences, while denied by the defendants, are urged as a distinction only in the means of proof of residence and are said not to be a variance in qualifications. The argument is that the poll tax payment requires all that the certificate requires. This view cannot stand against the obvious fact that the payment of the poll tax does not entail a procedure which is trustworthy in vouching residence. That the tax payment will be accepted in satisfaction of residential requirements even in a Federal election, despite its almost total deficiency as evidence of residence, reveals the certificate as an independent or superadded qualification.

We think the 1963 Acts do add a distinct qualification. The excess of exactions in themselves constitute a special qualification. But whether the 1963 Acts delineate another qualification or merely increase the quantum of necessary proof of residence, they unreasonably burden the duty of the Federal elector beyond that of the voter for the House of Delegates. This overburden, if not itself a separate qualification, is an increased qualification. The extra obligation offends the Federal Constitution by tasking the voter in an election for President, Vice President and Congress beyond what is asked of the elector in the choice of members of the House of Delegates. Art. I., § 2 and 17th Amendment.

Contra, we are cited to *Southerland v. Norris*, 74 Md. 326, 22 Atl. 137 (1891), and *Pope v. Williams*, 56 Atl. 543, (Md. 1903), *aff'd*, 193 U. S. 621 (1904). These cases sustained Maryland statutes treating with removal of persons from the State, their return and the entry of new residents. They sought proof of resumption or inception of residence.

But after the voter became qualified generally, neither case is authority for saddling a voter in a Federal election, in order to maintain his status, with a step or task beyond that required of a voter in a State election.

II. For non-joinder of indispensable parties the defendants move the dismissal of this action. The argument is that as the local electoral board, the registrars and clerks of court are the officers charged with the responsibility for the conduct of elections, no such declaratory or injunctive decree as prayed in the complaint would be effective in the absence of these officers. Only the State Board of Elections and the appropriate treasurer are named defendants. The proposition is unsound.

Poll taxes are paid to, and certificates of residence are filed with, the treasurer. He certifies to the election officials the lists of poll taxes paid and certificates filed. The Board prescribes and furnishes the certificates. Without the acts of these officers no election could proceed. They are sufficient parties for the aims of this suit.

III. Plaintiff's construe the 24th Amendment as erasing payment of poll taxes as a prerequisite to voting for members of the Virginia House of Delegates. We do not follow the reasoning of the plaintiffs to this end, and certainly do not subscribe to the conclusion. The legislative history of the joint resolution of the Congress eventuating in the 24th Amendment reveals beyond peradventure that the Amendment was not intended to outlaw poll taxes in any election other than a primary or general Federal election. House Report No. 1821, June 13, 1962, U. S. Code Cong. & Ad. News 4033, 4037, 87th Cong., 2d Sess. (1962). The very phraseology of the Amendment precludes any other interpretation. If the Congress had intended to illegalize the poll tax in all elections, it would have so declared in the

24th Amendment, as it did in the 15th and 19th, where comprehension of all elections was accomplished quite simply by omission of any designation of the elections affected. For the 24th Amendment an explicit designation was included as a limitation of its force to those elections named.

Furthermore, the poll tax as a condition to the exercise of the franchise in State elections has been constantly upheld. *Breedlove v. Suttles*, 302 U. S. 277 (1937); *Saunders v. Wilkins*, 152 F. 2d 235, 237 (4 Cir. 1945), *cert. denied*, 328 U. S. 870 (1946); *Butler v. Thompson*, 97 F. Supp. 17 (E. D. Va. 1951), *aff'd per curiam*, 341 U. S. 937. Indeed, the very fact that the Congress deemed a constitutional amendment necessary to abolish it in Federal elections demonstrates that such a tax is not in itself unconstitutional.

IV. That the Constitution of the United States requires the restraint upon the State which we now enforce, and the reason for it, are declared in that great commentary, the *Federalist*, No. 52, in this way:

"... I shall begin with the House of Representatives.

"The first view to be taken of this part of the government relates to the qualifications of the electors and the elected.

"Those of the former are to be the same with those of the electors of the most numerous branch of the state legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of

the federal government which ought to be dependent on the people alone. . . . It must be satisfactory to every State because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the federal Constitution."

An order will be entered declaring invalid, for the reasons stated, so much of the 1963 Acts—Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963—as requires the filing of a certificate of continuing residence six months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, and enjoining the defendants, their agents, servants and employees from requiring compliance with this part of the Acts.

The order will be suspended, however, for 30 days to allow the defendants, if they be so advised, to appeal to the Supreme Court of the United States, but the suspension shall thereafter cease unless the Supreme Court, or one of the Justices thereof, shall in the interval enlarge the suspension. No bond shall be required of the defendants to perfect the appeal or to obtain the suspension.

APPENDIX III
ACTS OF ASSEMBLY

CHAPTER 1

An Act to authorize persons, in anticipation of ratification of the 24th Amendment to the Constitution of the United States, to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections to be held in the year 1964 without payment of a poll tax, to prescribe certain duties of the State Board of Elections, and to make an appropriation to the State Board of Elections.

[H1]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (1) During the calendar year 1964 only and subject to the other provisions of this Act, every resident of Virginia who has been registered to vote prior to December 1, 1963, and who desires to vote during the calendar year 1964 without the payment of poll tax or any other tax, upon the adoption of the proposed 24th Amendment to the Constitution of the United States, in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in the Congress of the United States, may file a certificate of continuing residence in the office of the treasurer of his county or city, which shall be in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), re-

siding at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:
.....

or

Subscribed and sworn to before me this day of
....., 19.....

.....
Notary Public"

Such certificate shall be filed not later than six months prior to the general election held in November, 1964. Every such certificate shall bear the signature of the person offering the same and shall be verified by his affidavit or witnessed by at least one adult. Such certificate shall be conclusive of the facts stated therein, subject only to challenge under the provisions of § 24-253 of the Code.

(2) Such certificate shall be received by the treasurer, dated and marked filed, and upon the ratification of the proposed 24th Amendment to the Constitution of the United States, shall have the same force and effect as certificates of continuing residence filed under the provisions of § 24-17.2 of an Act of the General Assembly enacted at the special session of the General Assembly, 1963.

(3) The State Board of Elections shall forthwith prepare and distribute to the several county and city treasurers books in which such treasurers shall record the certificates of residence as provided for in this Act. The certificates

filed in the office of such treasurer shall be entered on such books alphabetically and by magisterial districts in counties and by wards or other election districts in cities.

2. There is hereby appropriated out of the general fund in the State treasury to the State Board of Elections a sum sufficient estimated at one thousand dollars.

Chapter 2

An Act to amend and reenact §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121 as amended, §§ 24-122, 24-123 and 24-124 of the Code of Virginia, and to amend the Code of Virginia by adding thereto sections numbered 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, all of which amended and new sections relate to registration and voting in State, local and Federal elections, and to the duties of certain election officials; and to make an appropriation to the State Board of Elections.

[H 2]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (a) Pursuant to the mandates of the Constitution of Virginia (including, without limitation, the provisions of Section 6 and Section 36 of the Constitution of Virginia), this Act is passed (1) to enable persons to register and vote in Federal elections without the payment of poll tax or other tax as required by the 24th Amendment to the Constitution of the United States, (2) to continue in effect in all other elections the present registration and voting requirements of the Constitution of Virginia, and (3) to provide methods by which all persons registered to vote in Federal or other

elections may prove that they meet the residence requirements of Section 18 of the Constitution of Virginia.

(b) The right of any citizen of the Commonwealth of Virginia to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress of the United States, or to register to vote in any such primary or such election, shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

2. That §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding §§ 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, the amended and new sections being as follows:

§ 24-17. Persons entitled to vote at all general elections.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, has been duly registered * under the provisions of § 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.1. Persons entitled to vote only at elections for certain Federal officers.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, and who has been duly registered under the provisions of § 24-67, but who, at least six months prior to such election in which he offers to vote, has not personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or who has been duly registered under the provisions of § 24-67.1, in either case if he is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote in the following elections and no other: primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.2. Proof of residence required; how furnished.—(a) No person shall be deemed to have the qualifications of residence required by Section 18 of the Constitution of Virginia and §§ 24-17 and 24-17.1 in any calendar year subsequent to that in which he registered under either § 24-67 or § 24-67.1, and shall not be entitled to vote in any election held in this State during any such subsequent calendar year, unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph

(b) of this section, or, at his option, by personally paying to the proper officer, at least six months prior to any such election in which he offers to vote, all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Proof of continuing residence may only be established by either of such two methods.

(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this day of 19

.....
Notary Public"

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.

(d) The treasurer shall keep in his office for public inspection, for at least two years after the same are filed, the certificates mentioned in paragraph (b) of this section.

(e) Nothing contained in this or any other section of this Act shall be construed as affecting any of the provisions of Chapters 2.1 and 13.1 of Title 24 of the Code relating to voters in the armed services.

* * *

(§ 24-67. Who to be registered for all elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, * at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, and who * has paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

(b) The names of all persons who have been registered under paragraph (a) of this section shall be enrolled in the registration book or type of record in use on the effective

date of this Act, which shall be known as "Roll of Persons Registered for All Elections."

(c) Persons registered under paragraph (a) of this section shall be registered to vote in every general, special or primary election held in this State; provided that no person registered under § 24-67.1 shall be deemed registered to vote in any general, special or primary elections except those elections for the offices enumerated in paragraph (c) of § 24-67.1, until he shall have been registered under paragraph (a) of this § 24-67.

§ 24-67.1. Who to be registered only for Federal elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, but who has not paid all State poll taxes assessed or assessable against him as required in Section 20 of the Constitution of Virginia and § 24-67.

(b) The names of all persons who have been registered under paragraph (a) of this section, shall not be enrolled in the registration books referred to in § 24-67, but shall be enrolled in a separate registration book or other type of record, which shall be known as "Roll of Persons Registered for Federal Elections Only."

(c) Persons registered under paragraph (a) of this section shall be registered to vote only in primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Con-

gress of the United States, and shall not by virtue of registration under this section be deemed to be registered to vote in any other general, special or primary elections held in this State.

APPENDIX IV

EXCERPTS FROM ADDRESS OF

ALBERTIS S. HARRISON, JR., GOVERNOR

to the General Assembly of Virginia

Extra Session

Tuesday, November 19, 1963

* * *

As a consequence, and operating under the Constitution of 1902, Virginia has the simplest system of registration and voting of any State in the Union. Any resident of Virginia, with sufficient intelligence to know such things as his name, age, date and place of birth, residence and occupation, and can scribble a legible signature, can register. He need own no property—or pay any taxes, other than a \$1.50 a year capitation tax, for not exceeding three years. Once admitted to registration, he is registered permanently. Unlike so many states, Virginia does not require that this registration ever be renewed.

The framers of our Constitution recognized that if we were to have permanent registration, and thereby promote full participation in elections by the residents of this State, a means would have to be devised to provide annually a current list of the residents of this State. Obviously, we could not rely on the registration books alone. A safeguard

had to be provided to determine whether those persons who had registered were still residents of Virginia and entitled to participate in the election in which they offered to vote.

A person who removes himself from this State and abandons his residence here, is not entitled to vote in this State. By the same token, Virginia is gaining population rapidly, and it is important that these welcomed new citizens be registered and encouraged to vote immediately they satisfy the conditions, both as to residency and registration incident to voting.

The architects of the Constitution, having determined upon permanent registration, and having abandoned the requirement of ownership of property as a qualification to vote, and then having failed to provide any effective literacy test, were confronted with the problem of how the electorate could be restricted to residents of this State,—and some stability attained.

Obviously they could not use the real estate or personal property tax list, for ownership of property was not to be made a condition for voting, and for the further very practical reason that many residents of Virginia do not own real or personal property, but do possess the intelligence, interest, and the ability to exercise the right of franchise.

It became apparent that the only list which should contain the name of every adult resident of Virginia was the capitation tax list. Accordingly, and out of the genius of that body of men, originated our present system, whereby it is presumed that any person, assessed with a capitation tax (and thereby alleged to be a resident of Virginia) who comes forward and voluntarily pays the assessment, six months prior to a general election, shall be presumed to be a resident of Virginia, and shall be deemed to have satisfied those provisions of the Constitution of this State which restrict voting to such residents.

Again I remind you that the capitation tax is Virginia's only universal tax that is assessed on every adult. It is a debt and is owed like all other taxes. It is paid by the citizens of this State in the same manner as a good citizen pays his other tax obligations. Because the tax is universal, the names and addresses of the persons against whom it is assessed are obtained by the Commissioners of Revenue from innumerable sources, and in some instances, the tax is assessed erroneously and inadvertently on people who have moved from Virginia, people who are dead, and some who are nonexistent. Certainly the voluntary payment of this tax by a person is fairly conclusive proof of the correctness of the assessment, and confirmation by that person of the fact that he is still a resident of this State.

In any event, this system has served Virginia well for more than a half a century. Last year, approximately one and a quarter million Virginians paid this tax.

The requirement that the tax be paid six months prior to the General Election is to prevent fraud, corruption and dishonesty, and to promote stability in the electorate.

To understand the six-month provision in our Constitution, one must have some knowledge of the conditions that existed in Virginia prior to the Constitutional Convention of 1901-1902. In that Convention, it was acknowledged time and again, by gentlemen from all sections of the State, that politics in Virginia were then corrupt; that there was a large purchasable element; that voters were bought and sold; that manipulation of voters by corrupt political leaders often constituted the balance of power in elections. It is interesting to note here that one of the members of the Convention in commenting on this corruption, said: "It is not the Negro vote which works the harm . . . it is the depraved and incompetent men of our own race, who have nothing at

stake in government, and who are used by designing politicians, to accomplish their purposes, irrespective of the welfare of the community."

It was because of this background that those who wrote the laws, under which we now operate, determined that participation in Virginia's elections would be encouraged by all interested citizens and those who had a stake in Virginia, and further that Virginia would throw around her elections, and the participants therein, every possible protection. This they accomplished, first by requiring those who desired to participate in elections to attest their residency by payment of a lawful tax, six months prior to the General Election.

Certainly there is no individual possessing the interest and concern to have a voice in his government who does not know, six months in advance, that he will want to vote on who is to represent him at all levels of government, and on all the issues properly to be submitted to the people.

Then, as an added safeguard, they wrote Section 38 of the Constitution, imposing specific duties on Treasurers, Clerks of Court and Sheriffs, in regard to the making, filing, certifying and publicizing the list of those who had paid poll taxes. And they required all of this to be done well in advance of any primary or General Election. The list is not only available for inspection in the office of every Clerk, but it must be posted at every polling place, and is thereby accessible for inspection by every citizen and every person who passes by. It is this publicity that has the prophylactic effect. It is the finest medium ever devised to prevent fraud and improper voting by non-residents of Virginia, or by any person who is not qualified from a residential standpoint to vote in a Virginia election.

Section 36 of the Virginia Constitution imposes upon this Body the responsibility to "enact such laws as are necessary

and proper for the purpose of securing the regularity and purity of general, local and primary elections. . . ."

It is because of this responsibility that we are here assembled. If the proposed Amendment 24 to the United States Constitution is adopted, and payment of the poll tax can no longer be a prerequisite to registering or voting, we will have no adequate safeguard under existing statutes to prevent persons who are registered, but no longer reside in this State, from voting in the 1964 elections, and in federal elections thereafter held.

In consideration of this matter, we must always keep in mind that under our system of permanent registration, a person once registered in Virginia is forever registered, until his name is purged from the list. In some of our counties and cities, the registration books are seldom, if ever, purged. Persons are carried on some books who have been dead for years or who have long since moved their residence from Virginia, or are otherwise disqualified from voting. In a hotly contested election, the opportunity to commit fraud or irregularities would be so great and so easy that our only protection is to remove the temptation by legislation at this extra session.

It has taken me longer than I should to get to this point in my remarks to you. In brief, and in anticipation of the adoption of Amendment 24, we need to devise something which will do for Virginia in federal elections what our capitation tax list presently accomplishes. That such action would be necessary has been a matter of common knowledge for many months, and has been the subject of numerous conferences between your Governor, the Attorney General of Virginia, and others, who are concerned with preserving the purity of Virginia's elections. At my request, the Attorney General has prepared bills which I hope will have

your approval. Our election laws are numerous and complicated because they involve not only federal, but State, county, city and town elections. They have evolved over a long period of years, and have come into being in an effort to promote full participation in elections and to assure their honesty. Under our Constitution, a great many public officials are charged with various responsibilities and duties to make certain that all properly registered residents of this State are permitted to vote. Therefore, we have to amend numerous sections of the Code.

However much we may disagree with the action of those states that have and will adopt the proposed Amendment 24 to the United States Constitution, we must agree that if this Constitution is to be amended, the manner in which it is being presently accomplished is legal, and certainly preferable to the judicial amendments thereto that we have witnessed in recent years.

I, therefore, recommend that this General Assembly enact a law to become effective upon the adoption of Amendment 24, prohibiting the denial or abridgement of the right of any citizen of Virginia to vote in any primary or other election for President or Vice President, or for Senator or Representative in Congress, by reason of failure to pay any poll tax or other tax.

The provisions in the Constitution of Virginia which require the payment of a capitation tax as a prerequisite to registering and voting in State and local elections, are deeply embedded therein, involve innumerable basic provisions, and will so remain until two separate General Assemblies and the people of Virginia decide otherwise. It is my considered judgment that it would be unwise to give even cursory attention or thought to tampering with Virginia's Constitution without careful and painstaking study. Such action at

this extra session would be hasty, ill advised, and not in the best interest of the people of this State.

Since the payment of a capitation tax will remain a prerequisite to voting in State and local elections in Virginia, I recommend that such payment continue to be accepted as proof of residency, and as a compliance with the residency requirement of Section 18 of the Virginia Constitution as to federal elections.

I further recommend that a bill be enacted, effective upon adoption of Amendment 24, which will give to every resident of Virginia the privilege of registering and voting, in federal elections, without regard to the payment of a capitation tax, or the time of its payment, provided he complies with other provisions of the Constitution and laws of Virginia, and, provided further, that six months prior to the General Election, he files a certificate with the Treasurer of the county, or city, in which he resides, setting forth that he is a resident of Virginia. To give such a certificate proper authenticity, it should be witnessed or acknowledged.

The Treasurer, Clerk, Sheriff and Sergeants, will be required to verify, certify and post such certifications of residence in exactly the same manner, and form, as they presently handle the list of persons who pay capitation taxes. The same publicity will attend both lists, and the same protections will prevent fraud and improper voting by both classes of voters.

In essence, the bills which are proposed will provide two methods by which residents of Virginia may register and vote in elections. One will be to comply with all existing provisions of the Constitution and laws of Virginia, including the payment of a capitation tax (which establishes residency) six months prior to the General Election. A person will thereby qualify to vote in all elections; federal, State

and local. The other, which will take effect upon the adoption of the 24th Amendment, will enable any resident of Virginia to register without payment of any poll tax, and to vote without payment of such tax, in federal elections only, provided that he establishes Virginia residency by filing of the certificate of residence six months prior to the General Election.

It is, of course, unnecessary for me to remind you that all legislation enacted at this session of the General Assembly is conditioned upon the ratification of the proposed 24th Amendment to the Constitution of the United States by the necessary number of states. We concede the possibility that such ratification may not occur prior to November, 1964. Irrespective of this, we simply cannot go into the important elections of 1964, in which we will select in Virginia one United States Senator, ten Congressmen, and participate in the election of a President and a Vice President, without the necessary safeguards. The privilege of selecting those who govern us is the most important responsibility discharged by any citizen of Virginia. Every protection should be provided to the end that this participation be not only free and full, but assured to and exercised by only those persons entitled to the privilege.

To those of you who may be tempted to rewrite the sections of our State Constitution dealing with the right of franchise, or may feel that this will be an easy accomplishment, I would remind you that the Constitutional Convention of 1901-1902 held as great an array of talent as has ever been assembled at any one time in Virginia. The one impelling and paramount reason for that Convention was the corruption, fraud and dishonesty that had crept into the political life of Virginia, and this was due in large measure to the election machinery then in operation. That Conven-

tion devoted more time, debate and prayerful consideration to the matter of suffrage, than to any other one subject. The Constitution under which we have operated for over sixty years was the outgrowth of nearly two years of deliberation.

* * *

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BRIEF FOR THE APPELLANTS
SUPREME COURT U.S.

IN THE
Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

v.

LARS FORSSENIUS, ET AL.

**Appeal from the United States District Court
For the Eastern District of Virginia**

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December 8, 1964

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IN THE
Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,
v.
LARS FORSSENIUS, ET AL.

Appeal from the United States District Court
For the Eastern District of Virginia

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the District Court for the Eastern District of Virginia, Richmond Division, is not yet reported. A copy of this opinion is included in the Transcript of Record (R. 42-50).

JURISDICTION

The jurisdiction of this Court rests on 28 U.S.C. § 1253. The Final Order of the court below was entered on May 29, 1964 (R. 51). Notice of Appeal was filed by Appellants on June 11, 1964 (R. 52). This Court noted probable jurisdiction on October 12, 1964 (R. 114).

STATUTES INVOLVED

The statutes involved are Chapter 1 of the Acts of the General Assembly of Virginia, Extra Session, 1963 (the Special Acts) (R. 5-18) and Section 24-17.2 of the Code of Virginia of 1950 (Supp. 1964), added by Chapter 2 of the Special Acts, which were held unconstitutional by the court below. Such specified portions of the Special Acts (Chapter 1 and Section 24-17.2) are hereinafter designated as the Statutes Involved. Because of their length, the Statutes Involved are not set out here verbatim. Their text is set forth at R. 5-7, 9-10.

QUESTIONS PRESENTED

1. Did the court below err in holding that the Statutes Involved, which may require a voter in an election for federal officers to prove residence by filing a certificate of continuing residence in advance of the election, thereby create a "qualification" for electors of the Congress not demanded of electors of the House of Delegates, the most numerous branch of the Virginia legislature, and are thus repugnant to Article I, § 2 and the Seventeenth Amendment of the Constitution of the United States?

2. Did the court below err in issuing on the authority of Article I, § 2 and the Seventeenth Amendment of the Constitution of the United States a general injunction against requiring compliance by an elector with the Statutes Involved in elections for President and Vice-President of the United States?

3. Should the court below have stayed the proceedings in these cases pending an interpretation of the Special Acts by the courts of Virginia in conformity with the doctrine of abstention?

4. Should the court below have sustained (i) the motions to dismiss the complaints in both cases for failure to join indispensable parties, or (ii) the motion to dismiss in the *Henderson* case for the plaintiff's want of standing to sue?

STATEMENT OF THE CASE

Since the adoption of its Constitution of 1902, Virginia has required, as a qualification, for voters and new registrants in all elections, payment in person in advance of elections of the state capitation or poll tax. See *Va. Const.* §§ 18, 20. The poll tax (used for educational purposes) is the only state-wide tax assessed annually against all state residents, and it is payable by such residents to the local revenue officials of the political subdivisions in which they reside. See *Va. Const.* §§ 173, 38.

At the same time payment of the poll tax became a voter qualification, permanent registration became an institution in Virginia. Once a voter has registered under the system that presently obtains, his name will ordinarily remain upon the registration rolls for life. Obviously, to prevent fraudulent voting by persons once registered who were no longer residents, a means of checking the continuing state and local residence qualifications of registered persons was necessary. The list of persons who, in their respective localities, had paid their state capitation taxes to qualify themselves to vote provided just such a means (R. 76-77).

When ratification of the Twenty-fourth Amendment to the Constitution of the United States, which absolutely prohibits the states from making payment of a poll tax a mandatory prerequisite for voting in certain enumerated federal elections, became imminent, it appeared that two fundamental changes in Virginia's election laws were necessary if such laws were to comply with both the Constitution of

the United States and the Constitution of Virginia. First, a dual system of registration and voting, with the poll tax in effect for state and local elections and inoperative for federal elections, had to be established to clarify the effect of the Twenty-fourth Amendment upon the existing system. Second, a new means of checking the residence qualifications of federal electors who chose not to pay their poll taxes had to be found.

The Governor accordingly convened an Extra Session of the Virginia General Assembly that proceeded to enact the Special Acts, which went into effect on February 19, 1964. On February 20, 1964, the Appellees instituted these suits, which were consolidated by an order of the court below entered on March 4, 1964 (R. 23).

These suits were instituted by the Appellees as class actions to have the Special Acts in their entirety declared unconstitutional, and to have the Appellants enjoined from enforcing any part of them. The Appellees are both registered voters, but their complaints reveal that while the Appellee Henderson paid his poll taxes in the manner prescribed by the Constitution of Virginia and the Special Acts (R. 20), and thus could not have been denied his vote in any election held in 1964, the Appellee Forssenius in 1964 neither paid his poll taxes nor filed the certificate of residence as provided in the Special Acts (R. 2). The Appellants are the members of the Virginia State Board of Elections, the Treasurer of Roanoke County, Virginia, and the Director of Finance in Fairfax County, Virginia.

The court below held unconstitutional only the Statutes Involved (as they required the filing of a certificate of residence), and generally enjoined the Appellants from enforcing them against any elector by a Final Order entered on May 29, 1964 (R. 51-52). Effectiveness of the Final Order was, however, suspended for thirty days so that the Appel-

lants might seek a further stay from this Court or a Justice thereof during the pendency of their appeal. An application for a Stay of Order was filed by the Appellants with Mr. Chief Justice Earl Warren on June 12, 1964, and was denied on June 24, 1964.

SUMMARY OF ARGUMENT

I. The Statutes Involved do not create a "qualification" for federal voters, not required of state voters, within the meaning of Article I, § 2 and the Seventeenth Amendment of the Federal Constitution. When these provisions speak of elector "qualifications," they mean the "qualifications" for voters established by the states in their constitutions. See *The Federalist*, No. 52, at 342 (Modern Library ed.) (Madison); *Ex parte Yarbrough*, 110 U. S. 651, 663 (1884). While there are no Virginia cases in point, authorities from other states (which the court below summarily disregarded) uniformly hold that a requirement for proof of an existing elector qualification appearing in the state constitution does not establish an additional "qualification" as a matter of state law. Annot., 14 A.L.R. 260 (1921).

The Statutes Involved do not purport to, nor do they in fact, do anything more than require that all voters prove their continuing satisfaction of the residence requirements of Section 18 of the Constitution of Virginia, by either one of two means: (i) filing a simple certificate of residence, or (ii) paying the poll tax (as required by the tax laws of Virginia regardless of whether it is a condition of voting) which, as the record reveals without any contradiction, has been the traditional means of proving voting residence since permanent voter registration was instituted in Virginia. Neither means of proof is compulsory upon any voter, state or federal; neither creates any burden upon the voter. There-

fore, since the Statutes Involved do nothing more than require proof of an indisputably valid existing qualification, they do not create an additional "qualification" for any elector as a matter of state law, and therefore as a matter of federal law as well.

Nor do the purely formal differences between the two means of proof suffice to make filing a certificate of residence a "qualification." In substance it is no different from its alternate. Payment of a poll tax, a tax assessed upon the person of the taxpayer, has always been regarded, in Virginia and elsewhere, as one of the strongest indicia of legal residence or domicile. See 1 Beale, *Conflict of Laws*, § 41C.6 (1935). In Virginia, because of the preliminary determinations as to legal residence implicit in assessment of the poll tax and substantiated by its voluntary payment, the essential facts proven by regular payment of a poll tax are exactly those required to be certified in the certificate of residence. Therefore, despite their formal differences, the means of proof provided for in the Statutes Involved are reasonably interchangeable in operative effect as methods of proof, and neither one could properly be held a "qualification." Thus, the court below erred in holding for the reasons appearing in its opinion that the Statutes Involved create an invalid "qualification."

II. Conceding *arguendo* that the certificate of residence requirement of the Statutes Involved creates a "qualification" for electors of the Congress within the meaning of Article I, § 2 and the Seventeenth Amendment, and that this "qualification" is not applied to electors of the Virginia House of Delegates, the Statutes Involved would indeed be invalid as applied to electors of the Congress. But they would be invalid only as so applied; there is nothing in the

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Federal Constitution that requires the qualifications of electors of the President and Vice-President to be the same as those of any other elector. Therefore, the court below erred in extending its decree against enforcement of the Statutes Involved to elections for the President and Vice-President, since under the lower court's reasoning the Statutes would be perfectly constitutional in that context.

III. This Court has repeatedly held that the "abstention doctrine" should be applied whenever (i) an injunction against a state statute on federal constitutional grounds is sought, (ii) the statute is unclear and uninterpreted by the state courts, (iii) there is an expeditious state remedy, (iv) a possibility exists that the statute will be invalidated as a matter of state law and the federal constitutional issue thus avoided, and (v) action by the federal court would needlessly interfere with a valid and vital state concern.

In these cases, the Appellees sought on federal constitutional grounds to enjoin the enforcement of the Special Acts. They argued at length that the Special Acts were unclear in light of relevant state constitutional and statutory provisions. The Virginia courts never had a chance to construe the Statutes Involved. Concededly, they would be held to violate the Constitution of Virginia if it should be found that they create a voter qualification not found therein, and this would dispose of both cases. In enjoining their enforcement, the court below interfered with one of the most valid and vital state concerns imaginable—proper administration of elections—and it did so needlessly, since the Appellees might have had expeditious relief under the Virginia Declaratory Judgments Act. Therefore, since all the necessary elements for invocation of the abstention doctrine were present in these cases, the court below ought to have abstained.

In addition, the Constitution of the United States itself and the numerous authorities construing it indicate that the states have *exclusive* power to create qualifications for voting in all elections—federal, state, and local. To be sure, once these qualifications are established, they become subject to the provisions of the Constitution. But the preliminary question of whether a particular enactment creates a qualification for voting under state law should surely be left to the state courts for determination.

IV. Since a decree granting the relief requested by the Appellees—an injunction against enforcement of all of the Special Acts—would have required inaction by parties not joined and not under the mandatory supervisory power of the Appellants, indispensable parties were not before the court below. And since the Appellee Henderson complied with all of the requirements of the Special Acts, he could not have been harmed or threatened with harm by them and therefore lacked standing to sue. The court below should therefore have dismissed both complaints on Appellants' motions.

ARGUMENT

I.

THE COURT BELOW ERRED IN HOLDING THAT THE CERTIFICATE OF RESIDENCE IS AN ADDITIONAL QUALIFICATION FOR VOTING.

A. Purpose and Effect of the Special Acts.

The Special Acts were passed by an Extra Session of the General Assembly of Virginia held in November, 1963, after it had become apparent that the Twenty-fourth Amendment to the Constitution of the United States would be ratified early in 1964, a year of presidential, congressional and municipal elections in Virginia. As has been in-

licated, the Constitution of Virginia has long contained provisions making the payment of capitation or poll taxes a prerequisite for registration and voting in all elections. *Va. Const.* §§ 18, 20. To amend these provisions requires affirmative action by two sessions of the General Assembly and a vote by the people. *Va. Const.* §§ 196-197. Thus, there was insufficient time to accomplish any amendment prior to the municipal elections to be held in June, 1964, and the congressional primary elections to be held in July, 1964.

The Twenty-fourth Amendment to the Constitution of the United States, of course, automatically rendered inoperative the poll tax requirements of the Constitution of Virginia as they applied to the specified federal elections. But it was equally clear from the language of the Twenty-fourth Amendment and the legislative history of Senate Joint Resolution 29, 87th Congress (2d Sess. 1962), proposing the Amendment, that it was not intended to prohibit the payment of poll taxes as a prerequisite to voting in state and local elections.¹

Thus, unlike the Fifteenth and Nineteenth Amendments which applied to *all* elections, the Twenty-fourth Amendment for the first time in our history created a possible distinction between qualifications for voting in Congressional elections and qualifications for voting in elections of members of the most numerous branch of the state legislature. In practical effect it created two sets of election laws in states having the poll tax as a prerequisite to voting where only one set existed before; this, as the Congress ex-

¹ H.R. Rep. No. 1821, 87th Cong. 2d Sess. 5 (1962) (filed as Def. Ex. 25); Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary, 87th Cong. 2d Sess. Ser. 25, at 25 (1962) (filed as Def. Ex. 24); 108 Cong. Rec. 3846 (1962) (remarks of Senator Holland) (filed as Def. Ex. 14).

pressly recognized,² was certain to create many mechanical or administrative problems.

The General Assembly was called into extra session in 1963 to deal with these practical problems in a way which would comply with the new mandate of the Twenty-fourth Amendment to the Constitution of the United States and also the long established requirements of the Constitution of Virginia. A fair reading of Acts of the General Assembly of Virginia, Extra Session, 1963, compels the conclusion that their purpose and effect were simply to codify the impact of the Twenty-fourth Amendment upon the Constitution and laws of Virginia and provide the mechanics for administering one set of qualifications (excluding poll tax payment) for registration and voting in federal elections and another set (including poll tax payment) for registration and voting in state and local elections.

**B. Qualifications for Voting Are Created By State Constitutions
Subject to Restrictions of U. S. Constitution.**

In the first sentence of its opinion (R. 43), the court below concluded that the Statutes Involved create a new or additional *qualification* for the federal voter not demanded of the state voter,³ and thus are repugnant to Article 1, § 2 and the Seventeenth Amendment to the Constitution of the United States. This conclusion is the corner-

² E.g., 108 Cong. Rec. 3846 (1962) (remarks of Senator Hill); *id.* at 4161 (remarks of Senator Byrd) (filed as Def. Ex. 16).

³ As used herein, "federal voter" refers to qualified electors of members of Congress as provided in Article I, § 2 and the Seventeenth Amendment to the Constitution of the United States, and "state voter" refers to qualified electors of the House of Delegates of the General Assembly, the most numerous branch of the General Assembly of Virginia as referred to in Article I, § 2 and the Seventeenth Amendment. This definition of terms is to be contrasted with that used by the court below (R. 43), which erroneously expanded these terms from Article I, § 2 and the Seventeenth Amendment to include electors of *all* federal and state officers.

stone of the entire opinion, and it is plainly and fundamentally erroneous.

The relevant provisions of Article I, § 2⁴ upon which the court below relied are as follows:

The House of Representatives shall be composed of Members chosen . . . by the People of the several States, and the Electors in each State shall have the Qualifications requisite for the most numerous Branch of the State Legislature.

These provisions represent a compromise reached by the members of the Constitutional Convention of 1787. While they realized that the subject of qualifications of electors of the federal legislature was too important to be omitted entirely from the national organic law, the framers of the Constitution were also aware that any attempt to lay down national uniform qualifications would arouse powerful opposition from the states. Consequently, they adopted Article I, § 2 as a compromise intended to promote stability and uniformity as fully as possible by making the qualifications of the national and state popular electors the same within each state, and simultaneously to preclude state opposition by leaving to the people of each state the ultimate power to establish such qualifications. As Madison wrote in *The Federalist*, No. 52, at 342 (Modern Library ed.):

It [Article I, § 2] must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State

⁴ The Seventeenth Amendment, which deals with popular election of members of the Senate, is substantially identical to Article 1, § 2 insofar as elector qualifications are concerned, and the two constitutional provisions are therefore to be given the same construction in this respect. Cf. *United States v. Aczel*, 219 Fed. 917, 929 (D. Ind. 1915), aff'd, 232 Fed. 652 (7th Cir. 1916).

itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such manner as to abridge the rights secured to them by the federal Constitution.

It is plain that Article I, § 2 (and the Seventeenth Amendment when later enacted) contemplate that the people of the states must first establish in their state constitutions the qualifications for state voters, which qualifications are then adopted by the U. S. Constitution as qualifications for federal voters. This Court and numerous other authorities have repeatedly observed that it is the state law that fixes the qualifications that apply to both federal and state voters. *E.g.*, *Minor v. Happersett*, 88 U. S. (21 Wall) 162, 171 (1875); *Ex parte Yarbrough*, 110 U. S. 651, 663 (1884); *Pope v. Williams*, 193 U. S. 621, 633 (1904); 1 *Story, Constitution*, § § 583-86 (4th ed. Cooley 1873); *Black, American Constitutional Law*, 535-37 (2d ed. 1897); see *Breedlove v. Suttles*, 302 U. S. 277 (1937); *Lassiter v. Northampton County Bd. of Elections*, 360 U. S. 45 (1959).

All the states now have, or have had, qualifications for voting based on age, residence, sex, race, property ownership, payment of taxes, literacy or other factors. But it should be observed at this point that the power to fix these qualifications, as vested in the people of the states by Article I, § 2 and the Seventeenth Amendment has subsequently been limited or restricted by the three Amendments dealing with voting qualifications—the Fifteenth, Nineteenth and Twenty-fourth. Each of these Amendments rendered inoperative a particular type of qualification (either in all elections or in specified federal elections), but none has altered fundamentally the original plan whereby the states

originate the voting qualifications, which are then adopted for federal voters to the extent provided in the Constitution of the United States.

As Madison foresaw, the state courts have been quick to proclaim the fundamental nature of voting qualifications. The Supreme Court of Appeals of Virginia, like similar courts in a majority of the states, has adopted the rule that qualifications for voting originate in the Constitution of Virginia and cannot be created or rescinded by mere legislative enactments. See *Carlisle v. Hassan*, 199 Va. 771, 102 S.E. 2d 273 (1958); *Willis v. Kalmbach*, 109 Va. 475, 64 S.E. 342 (1909); *Pearson v. Bd. of Supervisors*, 91 Va. 322, 21 S.E. 483 (1898).

C. The Statutes Involved Could Not and Did Not Create a New Qualification for Voting.

Every state has residence qualifications for registration and voting. Scammon, *The Electoral Process*, 27 *Law & Contemp. Prob.* 299 (1962). This has been a keystone of state control over voting. This Court has said that "residence requirements" are obvious examples indicating factors a State may take into account in determining the qualifications of voters. *Lassiter v. Northampton County Bd. of Elections*, 360 U. S. 45, 51 (1959).

Sections 18 and 20 of the Constitution of Virginia impose residence qualifications upon both registration and voting. As was explained in the debates of the Virginia Constitutional Convention of 1901-2, "this provision as to residence was recommended in the Constitution in order that the voter may be thoroughly identified with the community and may have a common lot with the people of the State, by a fixed residence in the State for a definite period." 2 *Debates of Const. Conv. of 1901-2*, 2943.

The requirements for proof of residence for voting purposes have great practical significance because Virginia has the permanent registration system whereby a person once registered to vote is not required to reregister periodically as in many other states. The means used since 1902 to keep the permanent registration list up to date is the list of persons who have voluntarily paid the poll tax assessed against all Virginia residents, which list is compiled and published prior to every primary or general election and used at the polls to verify the continuing eligibility of voters appearing on the permanent registration list. See *Va. Const.* § 38. Thus, payment of the poll tax has been not only a constitutional qualification for registration and voting, but also a practical means of proving the continuing residence required of all voters.

To give effect to the Twenty-fourth Amendment in federal elections and simultaneously retain the old provisions of the Constitution of Virginia in state elections required the creation of a method, in addition to voluntary payment of the poll tax, of proving continuing residence. This alternative method was the filing by the voter of a simple certificate of continuing residence during the same period when poll taxes must be paid, so that lists of persons establishing residence by either method could be prepared and published prior to each election and then be used to check eligibility at the polls.

The alternative method of proof was couched in plain language indicating unmistakably that it was not intended to constitute a new or added qualification which would violate the Constitutions of the United States and of Virginia.

Contrary to the ruling of the court below, a requirement of proof like that contained in the Statutes Involved does not establish a voter "qualification" as a matter of state

law (and consequently of federal constitutional law), but merely establishes the means by which an existing qualification shall be proven.⁵ The Statutes Involved purport to do no more than to require all voters—state and federal—to furnish each year subsequent to their registration proof that they have continued to satisfy the state and local residence requirements of Section 18 of the Constitution of Virginia, and it is universally held that a requirement of this type does not amount to a “qualification.” See the cases collected in Annot., *Validity of statute requiring information as to age, sex, residence, etc., as condition of registration or right to vote*, 14 A.L.R. 260 (1921).

Two cases which the Appellants believe are particularly persuasive on this question are *Southerland v. Norris*, 74 Md. 326, 22 Atl. 137 (1891), and *Pope v. Williams*, 98 Md. 59, 56 Atl. 543 (1903), aff'd, 193 U. S. 621 (1904). These cases held that legislative enactments requiring certain persons to register their intent to become or remain residents well in advance of election day did not create qualifications in addition to those found in the state constitution, but merely established the means of *proving* residence.

In the *Southerland* case, the statute in question provided that any registered voter who had removed from the state would be conclusively presumed to have abandoned his voting residence in Maryland unless, within thirty days after the passage of the statute, he should make an affidavit

⁵As a matter of historical interest, it is noteworthy that the first Constitution of Virginia, that of 1776, provided in Article VII that the right of suffrage in the election of members of both Houses shall remain as exercised at present. . . .

Among the several colonial election laws thus continued in effect was a law providing that a prospective voter might, before being admitted to vote, be compelled to make an oath that he possessed the local property ownership qualifications then required. 4 Laws of Virginia 476-77 (Henning 1820).

before the clerk of court that he did not intend to abandon his residence, but intended to return and resume his Maryland habitation prior to six months before election day. It was argued that the statute created a voter qualification in addition to those enumerated in the state constitution. The court, however, held that

the section in question does not purport to, and does not in fact, add anything to the qualifications of age and residence as they are fixed in the constitution. It deals exclusively with the evidence by which one of those qualifications—that of residence—shall be proved, just as it might have done with regard to the proof of age. (22 Atl. at 138.)

The statute questioned in the *Pope* case provided that no person coming into the state would be allowed to register to vote until one year after his intent to become a resident should have been formally entered upon a record book to be kept by the county clerks. Once again, it was argued that the statute established an additional qualification, and once again the court rejected the argument. It declared, 56 Atl. at 544:

Nor does the statute impose qualifications for voting, other than those prescribed by the Constitution. It leaves those qualifications precisely as they were before. It deals exclusively with the evidence necessary to establish residence, by providing what the evidence of residence shall be.

The Statutes Involved, exactly like the statutes in question in these two Maryland cases, merely provide alternative means by which voting residence in Virginia may be proved, and in so doing, they do not create any new or additional qualifications for the state or federal voter. The

means chosen by the General Assembly of Virginia are, of course, different from those employed by the Maryland legislature, but the instant cases are in principle indistinguishable from the Maryland cases. To require proof of residence is simply not to prescribe a new voter qualification for purposes of state law, and therefore for federal constitutional purposes as well.

The court below, however, attached controlling importance to the formal differences between the two means of proof permitted under the Statutes Involved. The Appellants cannot dispute the fact that purely formal differences exist, but insist that they are not sufficient to make filing a certificate of residence a new qualification for voting.

The sum of the reasoning of the court below on this point is that inasmuch as payment of a poll tax "does not entail a procedure which is trustworthy in vouching residence," and is characterized by "almost total deficiency as evidence of residence," its alternate, filing a certificate of residence, is inexplicable except as an "independent or superadded qualification" (R. 47). The Appellants believe that this reasoning is refuted both by the record in these cases and by the law generally.

In the first place, the finding that payment of state poll taxes does not effectively prove voting residence in Virginia is not only utterly devoid of support in the record; it is positively contradicted by it. The only evidence in the record as to the evidentiary significance of poll tax payment in Virginia consists of the legislative history of the Special Acts: Governor Harrison's address to the General Assembly of Virginia at its November, 1963 Extra Session (R. 71-82); the statement of the Attorney General of Virginia to the members of the Privileges and Elections Committees of the House of Delegates and Senate of the General As-

sembly at the Extra Session (R. 83-90); and the comment accompanying Section 24-17.2 of the bill introduced during the Extra Session (R. 97), which Section eventually became one of the Statutes Involved.

Governor Harrison reviewed the history of the Virginia election laws, and noted that poll tax payment has long served as a necessary concomitant of Virginia's system of permanent registration. He said:

The architects of the Constitution, having determined upon permanent registration, and having abandoned the requirement of ownership of property as a qualification to vote, and then having failed to provide any effective literacy test, were confronted with the problem of how the electorate could be restricted to residents of this State,—and some stability attained.

Obviously they could not use the real estate or personal property tax list, for ownership of property was not to be made a condition for voting, and for the further very practical reason that many residents of Virginia do not own real or personal property, but do possess the intelligence, interest, and the ability to exercise the right of franchise.

It became apparent that the only list which should contain the name of every adult resident of Virginia was the capitation tax list. Accordingly, and out of the genius of that body of men, originated our present system, whereby it is presumed that any person, assessed with a capitation tax (and thereby alleged to be a resident of Virginia) who comes forward and voluntarily pays the assessment, six months prior to a general election, shall be presumed to be a resident of Virginia, and shall be deemed to have satisfied those provisions of the Constitution of this State which restrict voting to such residents.

—Again I remind you that the capitation tax is Virginia's only universal tax that is assessed on every

adult. It is a debt and is owed like all other taxes. It is paid by the citizens of this State in the same manner as a good citizen pays his other tax obligations. Because the tax is universal, the names and addresses of the persons against whom it is assessed are obtained by the Commissioners of Revenue from innumerable sources, and in some instances, the tax is assessed erroneously and inadvertently on people who have moved from Virginia, people who are dead, and some who are nonexistent. Certainly the voluntary payment of this tax by a person is fairly conclusive proof of the correctness of the assessment, and confirmation by that person of the fact that he is still a resident of this State. (R. 76-77)

Similarly, the Attorney General stated:

... In Virginia, under our Constitution, there is only one registration which is permanent. Section 18 of the Constitution quoted above has always required residence of a specific time *next preceding an election* in which a person offers to vote. The assessment of the capitation or poll tax is made upon residents over twenty-one years of age as required by Section 173 of the Constitution. The bill is sent to a specific address. Payment admits continued residence. If a person is moving, he certainly would not pay this bill. Payment of the poll tax can therefore be accepted as admission of residence and of the intent to continue. Virginia has always accepted the payment of the poll tax as proof of continuing residence. ... (R. 85)

And the comment on Section 24-17.2 reads:

This is a new section requiring voters registered under §§ 24-67 or 24-67.1 to offer proof of residence in each year following the year of registration in conformity with Section 18 of the Constitution of Virginia. In the year of registration, the application for

registration will constitute sufficient proof of residence.

Proof of residence may be furnished in person or otherwise by either of two prescribed methods, and no other way. Continuing residence may be annually established by (i) payment of the poll tax, *thus continuing this long established method*, or (ii) filing a certificate of residence. . . . (R. 97) (Emphasis added.)

Thus, the Appellants believe that the finding of the court below that payment of a poll tax does not effectively prove residence is both unsupported and contradicted by the record. It was incumbent upon the Appellees herein to prove that there is no reason in fact for equating poll tax payment with filing a certificate of residence, but they failed to carry their burden of proof—in fact they did not introduce a scintilla of evidence tending to rebut the legislative history of the Special Acts.

Moreover, in addition to being unsupported by the record, the view of the court below as to the evidentiary effect of poll tax payment is untenable even as an abstract statement of law. Payment of a poll tax, or other personal tax assessed in a certain place, is regularly mentioned in innumerable cases as one of the circumstances (if not the major one) to be considered on the question of legal residence or domicile. See, e.g., *Mitchell v. United States*, 88 U. S. (21 Wall.) 350, 353 (1875); 1 Beale, *Conflict of Laws*, § 41C.6 (1935). Thus, payment of a poll tax has been cited to prove legal residence or domicile for purposes of the right to vote and to hold office, *Dotson v. Commonwealth*, 192 Va. 565, 66 S.E. 2d 490 (1951); *Williams v. Commonwealth ex rel. Smith*, 116 Va. 272, 81 S.E. 61 (1914); *Clark v. Stubbs*, 131 S.W. 2d 663 (Tex. Civ. App. 1939); *Canfield v. Cravens*, 138 La. 283, 70 So. 226 (1915); *State ex rel. Egan v. Steele*, 33 La. Ann. 910 (1881); *Yonkey v. State*

ex rel. Cornelison, 27 Ind. 236 (1866); for purposes of divorce jurisdiction, *Ex parte Weissinger*, 247 Ala. 113, 22 So. 2d 510 (1945); *Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917); *Chase v. Chase*, 66 N. H. 588, 29 Atl. 553 (1891); and for purposes of tax liability, *Bowen v. Commonwealth*, 126 Va. 182, 101 S.E. 232 (1919); *Cooper's Adm'r v. Commonwealth*, 121 Va. 338, 93 S.E. 680 (1917).

In fact, the act of payment of the Virginia poll tax in conformity with the Statutes Involved inherently proves exactly that which a person filing a certificate of residence must certify; consequently the two means of proof are rationally interchangeable with one another, and the reasoning of the court below that the differences between them are substantive rather than formal, so as to make the certificate a qualification, is erroneous.

It is to be noted first that in Virginia, the poll tax is assessed only against state residents. See *Va. Const.* § 173, *Va. Code* § 58-49. It is assessed on the first day of January of each year. *Va. Code* § 58-4. The Statutes Involved specify that the taxes that are paid to prove voting residence are not the taxes for the current (election) year, but the taxes due for the three years *next preceding* the current year. Therefore, when a prospective voter proves his residence by payment of poll taxes as provided in the Statutes Involved, he thereby demonstrates not only that he is a resident at the time he pays, but that he has been an assessable resident at least since January first of the year next preceding the election year—and that the one year's Virginia residence requirement of *Va. Const.* § 18 is therefore satisfied.

Furthermore, state poll taxes are not paid directly to the State treasurer upon his assessment, but are assessed by and paid to the local commissioners of revenue of each

political subdivision in the state. See *Va. Const.* § 38; *Va. Code* § 58-864. The act of assessment itself requires a preliminary determination at the time of assessment by the local commissioner of revenue that the person assessed is a resident of his political subdivision, see *Va. Code* § 58-864, and this determination is followed by the preparation and mailing of a poll tax bill to the person at his local address. The determination made by the commissioner is substantiated when the person assessed pays the taxes locally. Thus, payment of poll taxes demonstrates not only that the person paying is a local resident when he pays the tax, but also that he has been a local resident at least since January first of the year next preceding the election year—and that the six months' local residence requirement of *Va. Const.* § 18 is therefore satisfied.

Continuing payment of state poll taxes accordingly does in fact show that the taxpayer's voting residence has continued uninterrupted since the date of his registration to vote. The act of payment is itself "affirmative proof" of the essential facts that must be certified in the residence certificate: state and local residence.

Since a voter in Virginia cannot be disfranchised by removal from one voting precinct to another, see *Va. Const.* § 18, it is not material that payment of a poll tax does not tend to identify the taxpayer with any particular precinct within his locality, and correspondingly, although a voter who proves his residence by filing a certificate in accordance with the Statutes Involved must state his present residence address, he is not required to affirm that he will not remove from that address, but only that he will not remove from the locality. The requirement that the certificate be sworn to or witnessed merely endows it with probative value that might otherwise be argued to be utterly

lacking; in contradistinction to payment of a poll tax, which is universally accepted as proof of residence, see 1 Beale, *op. cit. supra*, § 41C.6, an unsworn declaration or claim of residence is regarded by many courts as so untrustworthy as to be inadmissible. See *id.* § § 41B-41B.1.

The form of the certificate of residence provided for in the Statutes Involved follows closely the forms of affidavits required of persons on active duty with the armed forces who are exempt from registration and payment of poll taxes as conditions of the right to vote. *Va. Const.*, Article XVII; *Va. Code* § § 24-23.1, 24-23.4.

It is interesting to note that the State of Massachusetts has had a law for many years which is comparable in several fundamental respects to the Statutes Involved. In Massachusetts, the registrars of each locality conduct annually a canvass to determine who are qualified voters. See *Mass. Gen. Laws Ann.*, ch. 51, § 4 (1959). Occasionally, a qualified voter will inadvertently be omitted from the list compiled in the canvass; but any male voter (Massachusetts assesses the poll tax only against males, *Mass. Gen. Laws Ann.* ch. 59, § 1 (1958)) so omitted may present a tax bill or notice or a certificate of residence, and either will be accepted as prima facie evidence of his residence. *Mass. Gen. Laws Ann.* ch. 51, § 43 (1958). The Statutes Involved are thus no legislative novelty; the Massachusetts statute demonstrates that in the judgment of one other state legislature, the mere assessment of a poll tax, not even its payment, is the substantive equivalent of a certificate of the voter as to his residence.

Therefore, in the Appellants' submission, the court below erred in ascribing to the formal differences between poll tax payment and filing a certificate of residence sufficient substance to make the certificate a qualification. It is merely one

of two permissively alternative means of proving a qualification—state and local residence—which everyone, including the lower court, concedes to be valid (R. 46).

What the court below has done is to strike down, for the flimsiest of reasons, a reasonable and legitimate requirement intended solely to prevent fraud and irregularity at the polls by supplying a rational alternative to the traditional means of proof of residence.⁶ To be sure, the Statutes Involved do not absolutely guarantee that nonresidents will never vote in Virginia elections; while it is an unlikely possibility, a sufficiently determined person might abandon his residence after paying his poll taxes and then return to vote, just as he might file a perjured certificate. But the Appellants submit that the imperfection of the means of proof, or either of them, provided for in the Statutes Involved, is no reason for holding either one unconstitutional. It is unnecessary to cite cases to support the presumption of constitutionality which attends every legislative enactment and the correlative proposition that if such an enactment can be upheld, it must be. The Statutes Involved can and should be construed as doing nothing more than delineating one means by which *all* voters may evidence their residence qualifications in advance of election day, and as so construed, they do not create a separate qualification for any class of voters, and they must accordingly be held constitutional.

⁶ It should be emphasized that the Appellees stated in their opening brief in the court below that they were not raising questions as to possible racial discrimination, and the Special Acts clearly do not involve any such discrimination. The U. S. Commission on Civil Rights stated in its *1959 Report*, p. 118, that poll taxes no longer serve as a serious restriction on Negro voting. In its *1961 Report*, p. 22, the Commission found that "no significant racially motivated impediments to voting" exist in Virginia.

II

**THE COURT BELOW ERRED IN APPLYING ARTICLE I, § 2
AND THE SEVENTEENTH AMENDMENT TO PRESIDENTIAL ELECTIONS.**

The Appellants urge that it was manifestly improper for the court below to enter an order applicable to elections for President and Vice-President of the United States. There is no legal foundation in the opinion or the law generally for an order of this breadth.

If it is assumed that the certificate of residence is a qualification for the electors of Congress not required of electors of the Virginia House of Delegates, this would render it unconstitutional in *Congressional* elections for repugnancy to Article I, § 2 and the Seventeenth Amendment, just as the court below held. But Article I, § 2 and the Seventeenth Amendment do not extend beyond Congressional elections. There is nothing in the Constitution of the United States requiring that the qualifications of voters for the President and Vice-President be the same as the qualifications for voters for any other officer, federal or state. On the contrary, the Constitution provides solely that the President and Vice-President are to be elected by the Electoral College, see the Twelfth Amendment, whose members are appointed by each state, "in such Manner as the Legislature thereof may direct." Article II, § 1.

It is therefore clear that since the lower court's opinion was bottomed solely upon Article I, § 2 and the Seventeenth Amendment, the opinion must leave the certificate of residence operative for voters in Presidential elections. Consequently, even if the opinion of the court below had established a legal basis for an order enjoining the Appellants from requiring a certificate of residence of electors of the Congress, it provides no legal basis whatever for an order

similarly enjoining the Appellants from requiring the certificate from popular electors of the President and Vice-President.

III

THE COURT BELOW SHOULD HAVE APPLIED THE DOCTRINE OF ABSTENTION IN CASES INVOLVING VOTER QUALIFICATIONS UNDER THE CONSTITUTION OF VIRGINIA.

In view of the many decisions of this Court applying the doctrine of abstention, and in view of the unmistakable intent of the Constitution of the United States, it was clearly erroneous for the court below to overrule summarily the Appellants' motions for a stay of proceedings pending an interpretation of the Special Acts by the Virginia courts.

These cases were instituted immediately after the Special Acts went into effect and, of course, before there was any opportunity for construction by the Virginia courts. Compare *Albertson v. Millard*, 345 U. S. 242 (1953). If a Virginia court should find that the certificate of residence requirement of the Special Acts is an independent or super-added qualification in addition to those found in the Virginia Constitution, it would concededly hold the requirement invalid as a matter of state law, and a crucial federal constitutional issue would accordingly disappear from the case. See *Spector Motor Serv., Inc. v. McLaughlin*, 323 U. S. 101, 105 (1944).

It is difficult to conceive of a more important and valid concern of a state and its people than the orderly administration of elections and the prevention of fraud and irregularity at the polls. Compare *Stainback v. Ho Hock Ke Lok Po*, 336 U. S., 368, 383 (1949). The lower court's Final Order has worked a "disruption of an entire legislative scheme of regulation," *Hosfetter v. Idlewild Bon Voyage Liquor*

Corp., 377 U. S. 324, 329 (1964), and it has done so needlessly, since the Virginia Declaratory Judgments Act provides an "expeditious avenue," *Harrison v. NAACP*, 360 U. S. 167, 178 (1959), by which the Appellees, with full protection of all their federal constitutional claims, could have presented the issues raised below to the proper Virginia tribunals, which are unquestionably far better equipped than the lower court to unravel the skeins of local law and administrative practices in which the Appellees' claims are entangled.

These cases are not in the least similar to *Davis v. Mann*, 377 U. S. 678 (1964), except that both involve elections and voting. The relevant state constitutional and statutory provisions were said in *Davis* to be "clear and unambiguous." Here the question of validity of the Statutes Involved under the Virginia Constitution is far from clear, as demonstrated by the fact that the Appellees devoted two-thirds of their opening brief in the court below to the argument of this pure question of state law. The court below chose to ignore the state question and to decide that the Statutes Involved are "qualifications" under the Constitution of the United States, although it is perfectly clear (and has been for over 150 years) that such Constitution does not *create* such qualifications but only *adopts* those created by the states in the exercise of a power limited at the federal level only by the Fifteenth, Nineteenth and Twenty-fourth Amendments.

Thus, it is apparent that there remains in these cases a threshold question of state law that is novel, difficult and still unanswered—but possibly dispositive of all the issues herein. All the "concerns which have traditionally counseled a federal court to stay its hand," *Martin v. Creasy*, 360 U. S. 219, 224 (1959), exist in these cases in a marked degree, and the lower court should therefore have abstained.

But in addition to the presence of the aforementioned concerns, there is another reason of constitutional dimensions, already discussed above, why the court below erred in refusing to abstain. According to the earliest great commentaries on the Constitution, to numerous decisions of this Court and to the plain wording of the provisions themselves, Article I, § 2 (and the identical language of the Seventeenth Amendment) of the Constitution of the United States establish the *exclusive* power of the states to create voter qualifications for electors of the Congress. To be sure, once voter qualifications are fixed by the states, they become, through adoption by the same federal constitutional provisions, part of the Constitution itself, see *Ex parte Yarbrough*, 110 U. S. 651, 663 (1884); and thus, once a voter is qualified under state law, his right to vote for members of the Congress becomes a federally protected right, see *United States v. Classic*, 313 U. S. 299, 314-15 (1941). But the preliminary process of fixing voter qualifications unquestionably is purely and wholly of a matter of state law: constitutional, statutory and decisional (if the question should arise whether or not a constitutional or statutory provision establishes a qualification). See *Ventre v. Ryder*, 176 Supp. 90, 97 (W. D. La. 1959).

Federal authority is likewise excluded by the Constitution of the United States from the matter of establishing the qualifications of voters for electors of the President and Vice-President, where such electors are chosen by popular vote. Article II, § 1 entrusts this matter wholly and exclusively to the states. See *e.g. McPherson v. Blacker*, 146 U. S. 1, 27 (1892); *In re Opinion of the Justices*, 118 Me. 552, 107 Atl. 705, 706 (1919); *McCrary, Elections*, § 38 (4th ed. 1897).

Thus, the Constitution of the United States by necessary

implication, gives exclusive competence to the state courts to decide the question whether a state legislative enactment creates a qualification or not, and the same Constitution must therefore effectively deprive the federal courts of competence to decide that question. It is quite plain that Article I, § 2, Article II, § 1 and the Seventeenth Amendment prevent Congress from enacting legislation to establish voter qualifications, and it is likewise plain by parity of reasoning that these same provisions must, when the issue is presented, prevent the federal courts from establishing qualifications, as the court below did, by judicial decree. And if these provisions do not absolutely prohibit the federal courts from deciding questions of voter qualifications, surely they indicate most forcefully that the state courts are the proper tribunals for the resolution of such questions.

Therefore, the court below erred in denying the Appellants' motions to stay, since all the traditional reasons compelling abstention are present, and additionally because the Constitution of the United States requires that the very question decided by the court below be submitted to the courts of Virginia. Due respect for the powers of the people of the states in this area, which antedate the Constitution itself and which Article I, § 2, Article II, § 1 and the Seventeenth Amendment were intended to preserve intact, demands nothing less.

IV

THE COURT BELOW ERRED IN OVERRULING THE APPELLANTS' MOTIONS TO DISMISS.

The court below overruled the Appellants' motions to dismiss in both cases for failure to join indispensable parties, namely the registrars and other local election officials of

Roanoke and Fairfax Counties where the Appellees reside. Its reasoning was that since it could halt the certificates of residence at their source, as it did, by forbidding the State Board of Elections and the local revenue officials who had been joined from specifying the form of the certificates and from receiving them, all indispensable parties were before the court.

If the issue of indispensability were to be determined by the nature of the relief eventually *granted*, there could be no substantial question as to the propriety of the lower court's holding. But this is not the test; the test is rather whether an order granting the relief *requested* would require the party not joined to take action or refrain from taking it, or, to say the same thing, whether such an order can expend itself solely upon the persons before the court. See *Williams v. Fanning*, 332 U. S. 490, 493, 494 (1947); 2 *Barron & Holtzoff, Federal Practice & Procedure*, § 515 (1961).

The relief requested in the complaints in the instant cases was an injunction against enforcement of *all* of the Special Acts, not merely the portions thereof dealing with the certificate of residence (R. 4, 22). The relief requested accordingly included an injunction of registration under the dual system established by the Special Acts (*Va. Code* §§ 24-67, 24-67.1, R. 11-12). But registration in Virginia is entrusted to local registrars, see *Va. Code*, tit. 24, ch. 6, and the appellants have no power over local registrars except to "supervise and co-ordinate" their work so as to insure uniformity of practices and legality and purity in all elections. *Va. Code* § 24-25. Consequently, under the rule just stated, the local registrars, whose inaction is necessary for the relief requested, and who are not under the mandatory authority of the Appellants, are indispensable parties, and the

court below ought to have dismissed these cases for their nonjoinder.

The court below likewise erred in denying the Appellants' motion to dismiss the complaint of the Appellee Henderson. Since Henderson is a registered and qualified voter who admittedly paid his poll taxes in conformity with the Statutes Involved (R. 20) and thereby proved his residence, he could not have been denied his franchise under color of the Special Acts in any election held in 1964. Therefore, since Henderson was neither harmed nor threatened with immediate harm by the statutes he attacked, it is elementary that he lacked standing to call their constitutionality into question. *E. g.*, *Poe v. Ullman*, 367 U. S. 497 (1961); *Alabama State Fed'n of Labor v. McAdory*, 325 U. S. 450 (1945); *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288 (1936); *id.* at 346-48 (Brandeis, J., concurring); *Tyler v. Judges of Court of Registration*, 179 U. S. 405 (1900); *Marye v. Parsons*, 114 U. S. 325 (1885).

The Appellants submit that the lower court erred in disregarding both of the aforementioned fundamental procedural principles. Surely no case is important enough to warrant that orderly processes of law be cavalierly ignored in a headlong rush to the merits.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed and final judgment entered for the Appellants, or in the alternative, that the judgment of the court below with respect to the preliminary motions should be reversed and these cases remanded with directions to the court below to dismiss the complaints in both, or in the alternative, that the judgment of the court below should be vacated and these cases re-

manded with directions to the court below to retain jurisdiction and to afford the Appellees a reasonable opportunity to proceed in the courts of Virginia, or in the alternative, that the Final Order of the court below should be modified so as to omit all reference to elections for President or Vice-President.

Respectfully submitted,

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PROOF OF SERVICE

I, Richard N. Harris, one of the attorneys for the Appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of December, 1964, I served copies of the foregoing Brief for the Appellants on the several Appellees hereto by mailing same in duly addressed envelopes, with first-class postage prepaid to their respective attorneys of record as follows: H. E. Widener, Jr., Esq., Widener & Widener, Attorneys at Law, Reynolds Arcade Building, Bristol, Virginia; David H. Frackelton, Esq., Attorney at Law, Reynolds

Arcade Building, Bristol, Virginia; L. S. Parsons, Jr., Esq., Parsons & Powers, Attorneys at Law, Maritime Tower, Norfolk, Virginia; J. L. Dillow, Esq., Dillow & Andrews, Attorneys at Law, Giles Professional Building, Pearisburg, Virginia; John N. Dalton, Esq., Dalton, Poff & Turk, Attorneys at Law, First & Merchants National Bank Building, Radford, Virginia; and to Bentley Hite, Esq., Attorney at Law, First National Bank Building, Christiansburg, Virginia. Copies thereof were also mailed, in duly addressed envelopes, with first-class postage prepaid to: Ralph G. Louk, Esq., Commonwealth's Attorney for Fairfax County, Fairfax, Virginia, counsel of record below for the defendant, L. M. Coyner, and to Edward H. Richardson, Esq., Commonwealth's Attorney for Roanoke County, Roanoke, Virginia, counsel of record below for the defendant, James E. Peters.



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IN THE

Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR. ET AL, APPELLANTS,

V.

LARS FORSSENIUS, ET AL, APPELLEES

Appeal from the United States District Court
For the Eastern District of Virginia

BRIEF FOR APPELLEES

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1964

No. 360

A. M. HARMAN, JR. ET AL,
Appellants

LARS FORSSENIUS, ET AL,
Appellees

Appeal from the United States District Court
For the Eastern District of Virginia

BRIEF FOR APPELLEES

PRELIMINARY

Italics are ours unless otherwise indicated. All exhibits of both sides were admitted without objection prior to the trial.

STATEMENTS OF JURISDICTION AND
STATUTES INVOLVED

The statements of jurisdiction and statutes involved set out in Appellants' brief p. 1 and p. 2 are acceptable to Appellees.

QUESTIONS PRESENTED

Questions 1, 3, and 4, as set forth on p. 2 and p. 3 of Appellants' brief are acceptable to Appellees.

It is submitted that question 2, page 2, ought to be phrased as follows, with changes by this writer being bracketed or italicized:

"2. Did the court below err in issuing on the authority of Article 1, §2 [and] the Seventeenth Amendment or *Fourteenth Amendment (with its consequent legislation, 42 U.S.C. 1983, etc.)* of the Constitution of the United States a general injunction against requiring compliance by an elector with the Statutes Involved in elections for President and Vice-President of the United States?"

STATEMENT OF THE CASE

The statement that the poll tax is used for educational purposes (Appellants' brief p. 3) is not quite accurate; see *Va. Const.* Article XIII, §173, 2/3 for schools, 1/3 for other uses. And while the accuracy of the statement is not really an issue in this case, the implication is, for the whole tenor of Appellants' brief seems rather subtly designed to divert the attention of the Court away from the real issues of the case.

The brief would seem to say that the poll tax is an innocuous and justifiable measure designed and used wholly to keep track of voters and to provide a presumption of residence, with its proceeds used wholly for educational purposes.

We submit nothing could be further from the fact, and less supported by the record.

The entire authority for these claimed virtues of the poll tax is found by Appellants in the Governor's address to the General Assembly which enacted the contested statutes (R. 73 et seq.), and in the similar statement of the Attorney General (R. 83 et seq.). While the Governor contends the purpose of the poll tax is a mere means of keeping an up to date voting list and providing a presumption that anyone who pays the tax is a resident, the *Debates of the Constitutional Convention of 1902*, support him on neither count.

A careful reading of all the debates on suffrage, p. 2937-3080, fails to reveal a single reference to the poll tax being used as proof of residence or means of keeping an up to date voting list. Poll tax and residence were throughout considered as separate qualifications, as they now are. See *Va. Const.* Article II, Section 18, (R. '84), and *Va. Code* Section 24-17 (R. 94).

The purpose of the suffrage provisions of the Virginia Constitution of 1902 was hardly for such innocent purposes as now claimed by Appellants, rather its purpose was expressed in the *Debates* by the Honorable Carter Glass:

"Discrimination! Why that is exactly what we propose; that, exactly, was what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution . . ." II *Debates* p. 3076.

It was to eliminate a part of this discrimination that Amendment XXIV to the United States Constitution was enacted.

But the Special 1963 Session of the Virginia Legislature observed neither the permissible action admonition of Senator Glass, nor federal constitutional and statutory limitations. The fact that it did not creates the questions and issues in these cases.

SUMMARY OF ARGUMENT

We will follow the general outline of argument used by Appellants', taking, of course, the opposite position.

Due to the narrowness of the issues and numerous authorities cited by Appellants, we will not attempt to answer each particular case, treatise, etc. but will set forth our position and authority upon which we rely. To do otherwise would result in a volume, the substance of which could not possibly be covered in the time allotted. For example: We are not going to argue in our brief the Virginia cases cited on p. 13 of Appellant's brief, although the three cases clearly indicate that the Legislature in its zeal violated the Virginia Constitution as well as the U. S. Constitution.

We can not let pass unnoticed a statement made at p. 7 of Appellants' brief which is:

"They argued at length that the Special Acts were unclear"

Not only is this not the fact, our position was clearly stated at p. 11 in our reply brief in the District Court.

"The wording and effect of the statutes complained of in this suit are clear and unambiguous."

Appellants apparently overlooked the foregoing and other similar statements in our brief in their rush to the shelter of abstention.

I. We will argue that the certificate of residence is a qualification for voting; that similar requirements have been so held by this court; that neither the poll tax nor the certificate is mere evidence or proof of residence; and will invite particular attention to the wording, effect and history of the Special Acts.

Although more properly placed in the section of the brief on abstention, we will argue that Virginia has not used the time she had to effect any constitutional change required.

II. We will argue that the second question presented to this court by Appellants (p. 2 of their brief) is not correctly phrased; is a strained construction of the opinion and order of the District Court; and that the District Court pointed out in detail the inequalities and discrimination of the Special Acts thus placing them squarely within the prohibition of Amendment XIV to the U. S. Constitution, and Secs. 42 U.S.C. 1983 and 1988.

III. We will argue that the District Court properly denied Appellants' motion for abstention. In the words of the District Court,

"Whether a requirement of State law constitutes a discrimination against the Federal voter . . . is immediately a Federal question." (R. 46)

The position of the District Court is supported by very recent cases from this court.

IV. We will argue that all indispensable parties were before the court. The District Court said that:

"Without the acts of these officers no election could proceed" and "they are sufficient parties for the aims of this suit." (R. 48)

The holding of the District Court is supported by the Virginia statute setting forth the relation of the State Board of Elections to the local authorities, as well as by plaintiffs' various exhibits.

We will further argue that the District Court acted properly when it did not dismiss Henderson as a party to the suit because he, particularly, as Chairman of his party, as well as every other federal voter in Virginia, has a real and present interest in the result of a national election.

ARGUMENT

I.

THAT THE CERTIFICATE OF RESIDENCE IS A QUALIFICATION FOR VOTING.

A. Has Virginia had time?

While the Special Acts complained of were brought about by the Twenty-fourth Amendment, the plea that Virginia has had insufficient time does not ring true. There have been two legislative sessions since the 1963 Special Session, one in January 1964, one in November 1964, and neither the 1963 Special Session, nor either later one, proposed any constitutional change concerning poll tax. The situation could have been remedied had the State seen fit, but she did not.

B. Effect and Validity of the Certificate of Residence.

Conceding, at this time, that the poll tax is a valid qualification for voters in state elections, we pass to the

first full paragraph on page 10 of Appellants' brief. With no significant deletion we find:

"A fair reading of Acts . . . Extra Session, 1963, compels the conclusion that their purpose and effect were simply to codify . . . and provide the mechanics for administering one set of qualifications . . . for registration and voting in federal elections and another set for registering and voting in state and local elections."

Yet this is exactly the kind of law expressly forbidden by Article 1, Section 2, and Amendment XVII of the United States Constitution. It is expressly forbidden to have one set of qualifications for state elections for the House of Delegates, and one set for congressional elections, with prohibition that poll tax payment may not be required in a national election. Amendment XIV further prohibits discrimination, as do applicable federal statutes.

Virginia seems determined to disregard the express provisions of the U. S. Constitution, and the effect of it, as expressed in the instrument itself, by this court, and in the *Federalist*.

The *Federalist* No. LII (Hamilton or Madison) of February 7, 1788, is more illuminating when more of the commentary is read:

" . . . I shall begin with the House of Representatives.

The first view to be taken of this part of the government relates to the qualifications of the electors and the elected.

"Those of the former are to be *the same* with those of the electors of the most numerous branch of the state legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been

improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone . . . It must be satisfactory to every State because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the Federal Constitution."

The question of qualification has been commented upon by this court on two occasions which are worthy of note here.

In *ex parte Yarbrough* 110 U.S. 51, 28 L.Ed. 274, (1884) it was said:

"The states in prescribing the qualifications for voters for the most numerous branch of our Legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualifications for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says *the same persons* shall vote for members of Congress in that State. It adopts the qualification then furnished as the qualifications of its own electors for members of Congress.

"It is not true, therefore, that electors for members of congress owe their right to vote to the state law in any sense which makes the exercise of that right to depend exclusively on the law of the State." 28 L.Ed. 274, 278.

The case of *Pope v. Williams*, 193 U.S. 621, 48 L.Ed. 817, (1904) will be discussed later, but the following quotation is applicable at this point.

"The statute, so far as it concerns him and the right which he urges, is one making regulations and conditions

for the registry of persons for the purpose of voting." 48 L.Ed. 817, 822.

"...the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, *provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution.*" 48 L.Ed. 817, 822.

"...it may be observed that the right to vote for a member of Congress is not derived exclusively from the state law." 48 L.Ed. 817, 822.

Having briefly reviewed a few applicable precedents which should have guided the Legislature, we will discuss the two cases obviously relied upon by Appellants to the exclusion of almost all else. They are *Pope v. Williams*, 98 Md. 59, 56 A. 543, aff'd. 193 U.S. 621, 48 L.Ed. 817 (1904), and *Southerland v. Norris*, 74 Md. 326, 22 A. 137 (1891).

The *Pope* case involved construction of a Maryland Statute which required a person coming into the state to register his name with the clerk of the county or city and thus indicate his intention of becoming a citizen and resident a given time previous to voting. The Maryland statute was upheld on the ground that the indication of residency by so registering was a qualification for voting, and subject to control by the state.

We wish to emphasize from the *Pope* case two holdings: First, the act of registering is a *qualification*, exactly the opposite meaning than that contended for by Appellants; and second, *all new* residents were required to so register, not only those voting in federal elections. The discrimination of the Virginia Special Acts was absent from the Maryland statute.

The *Southerland* case involved a Maryland statute which required removal from the registration lists of persons removing from Maryland and taking up residence elsewhere, unless such person made and filed an affidavit that he intended to return to Maryland six months prior to the election of November 1890.

This statute was sustained by the Maryland court on the ground that it concerned evidence of residence.

But again note the dissimilarity with the Virginia Statutes involved here. In the Maryland statute there is no discrimination, *all* persons removing must file, not only those voting in Federal elections.

While Appellants argue that the *Southerland* case is authority for their position, it is interesting to note that the *Pope* case is later in time than the *Southerland* case, and the State of Maryland contended in *Pope*, and was supported by this court, that the registration for incoming residents was a *qualification*.

The sum total of both cases is this:

In both cases the Maryland statutes did not discriminate against federal voters—the Virginia Statutes do.

The ruling by this court in the *Pope* case as to what constitutes a qualification is directly against Appellants' position. It is only fair to assume that had the Maryland statutes provided for registration and affidavits only by federal voters, they would have been held invalid as were the Virginia Special Acts by the District Court.

Had the Virginia Legislature wanted to, it could have provided for certificates of residence for all voters, state and federal, and the problem might have been solved. But it obviously did not want to solve the problem, it wished to discriminate against the federal voter, who is now required to file the certificate while the state voter is not.

In any event, as the District Court said, "... neither case is authority for saddling a voter in a Federal election, in order to maintain his status, with a step or task beyond that required of a voter in a state election." (R. 48)

Such heavy emphasis is laid by Appellants on the Governor's Address (R. 73 et seq.) and the statement of the Attorney General (R. 83 et seq.) that it does not seem amiss for us to comment on the history of this legislation.

The best brief and readable histories of the Virginia suffrage provisions prior to 1902 we have found are *Long's*

Constitution of Virginia, and the opinion in *Willis v. Kalmback*, 109 Va. 475, 64 S.E. 342.

Not a jot or a tittle is found to support Appellants' contention that the poll tax is evidence of residence and a means of keeping an up to date voting list, and has been considered such since 1902.

The *Debates of the Virginia Constitutional Convention of 1902* is a full and accurate reporting of the entire convention. The principal objective of the Convention was suffrage change, and the subject was debated at great length by the most able people in the Commonwealth. Not once was payment of poll tax mentioned as anything other than a qualification for voting. To the contrary it was often discussed, and always as an additional qualification to that of residence.

The constitutional provision and the legislation which followed stood unchanged for more than 60 years in any particular which is material here.

Article II, Section 18:

"§18. Qualification of voters.—Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days next preceding the election in which he offers to vote, has been registered, *and* has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved until the expiration of thirty days after such removal.

"The right of citizens to vote shall not be denied or abridged on account of sex."

Va. Code §24-17. "Persons entitled to vote at general elections.—Every citizen of the United States twenty-one years of age, who has been a resident of the State

one year, of the county, city or town, six months; and of the precinct in which he offers to vote thirty days next preceding the election, in which he offers to vote, has been duly registered, *and* has paid his State poll taxes, as required by law, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal."

Note in both the constitution and the statute the use of the conjunctive *and*: "... who has been a resident of the State one year . . . *and* has paid his state poll taxes . . .".

Not a word is found in the Code, or in the *Debates*, or anywhere else, about payment of poll tax being anything other than a qualification for voting until November 12, 1963; when the Attorney General made his statement to the Privileges and Elections Committees of the General Assembly, which was quickly followed by the Governor's address on November 19, 1963.

Having thus slept silently and unnoticed (indeed without record), this "proof of residence" came into the world, and in two speeches legislative history was born.

No attempt was made in the Convention to hide the purpose of the poll tax. It had nothing to do with residence or attachment to community. It was put in purely and simply for the purpose of restricting the electorate, and the annals of the Commonwealth do not reveal any mention of proof of residence until November 1963.

The legislature cannot by fiat simply say that the certificates of residence are not qualifications. If in fact they are qualifications, all the legislation in the world cannot change it. A silk purse cannot be made from a sow's ear. Neither can the legislature make a qualification into mere evidence of residence.

The entire history of the poll tax in Virginia, and the statutes here under review, we submit, compel the conclusion that the sole object of the Special Acts was to hinder the voter who would not pay his poll tax as much as possible by the establishment of additional qualifications.

We invite the attention of the court to the Special Acts, defendants Exhibit No. 31 (R. 91 et seq.).

(1) At p. R. 92 in the preamble is the following language:

"... to file certificates of continuing residence so as to be able to vote, *if otherwise qualified, in Federal elections.* . . ."

"If otherwise qualified" must refer to something. It is obvious that at the very outset of the bill the legislature recognized that filing the certificate was a qualification. The same phrase "otherwise qualified" is used in referring to the poll tax and other qualifications in Sec. 24-17 of the *Virginia Code*.

(2) At the top of p. R. 94 is a statement that:

"The right . . . to vote [in Federal elections] . . . shall not be denied or abridged by reason of failure to pay poll tax or any other tax."

Yet the State unequivocally instructed that a person registered prior to December 1963, who wished to vote in the 1964 general election is required to file the certificate of residence or pay the poll tax, or he cannot vote. See plaintiffs exhibit 5 (R. 60), and defendants exhibit 38 (R. 112). If a voter does not pay his poll tax, or file the invalid certificate, he may not vote. If this is not an abridgment or denial of his rights we fail to see what it is.

(3) At p. R. 94, in speaking of the revised Sec. 24-17 of the code the comment states:

"This section presently states the *qualifications* required of all persons offering to vote in all elections held in this state. . . ."

Thus poll taxes are referred to as *qualifications*.

(4) At p. R. 95 is the new Sec. 24-17.1 with its comment that:

"§24-17.1 allows *any* registered voter to vote in Federal elections, even if he has not paid poll taxes. . . ." (italics not ours)

(5) This comment, however, is quickly followed by new Sec. 24-17.2, which takes away from the voter the right just given him if he fails to file the certificate of continuing residence, or at his option paying a poll tax. Since the payment of the poll tax is universally admitted by everyone other than Appellants to be a qualification, how can they maintain that the optional method of filing the certificate is not a qualification?

(6) At p. R. 95, 96, and 97 the comments on Sec. 24-17.1 and 24-17.2 quickly switch from referring to poll taxes or the certificates as qualifications, and speak of either merely as proof of residence.

(7) At p. R. 98, Sec. 24-67 of the Code amends the previously existing 24-67 to provide for a special roll for registering for all elections, and the comment refers to the poll tax as a qualification for registration for voting.

(8) At p. R. 99, Sec. 24-67.1 sets up the different rolls of persons registered and qualified to vote in Federal elections only.

(9) At p. R. 100, Sec. 24-78, Sec. 24-79, and Sec. 24-87.1 provide for the posting, certification, recording, and transfer of both registration rolls.

(10) At p. R. 101, Sec. 24-120 requires the treasurer to file, 158 days before the election, lists of those who have paid poll taxes and those that have filed certificates of residence. Thus the list of certificates, claimed not to be a qualification, is accorded the same treatment as the poll tax list, which is a qualification.

(11) At p. R. 102, Sec. 24-121 requires the poll tax list and the certificates list to be posted in the same manner, and requires them to be delivered in the same manner to the registrars.

(12) At p. R. 102, Sec. 24-122 requires both lists to be similarly retained by the clerk for public inspection.

(13) At p. R. 102 and 103, Sec. 23-123 provides the same procedure for the correction of both lists by persons whose names have been improperly omitted.

(14) At p. R. 103, Sec. 24-124 requires the clerk to deliver both lists in the same manner to the judges of elections. The section further provides that each list shall have the same effect.

(15) At p. R. 103, Sec. 24-128.1 provides the same method for transferring people on the certificate list, as is provided by Sec. 24-128 for people on the poll tax list.

The only conclusion we are able to draw from the above comparison is that the Special Acts are designed as an effective substitute for the poll tax to restrict the electorate in federal elections, and are a patent evasion of the 24th Amendment, as well as an invidious discrimination against the federal voter.

At the risk of repetition we would like to tabulate the differences in the law for those voting for the House of Delegates and those voting in a federal election.

House of Delegates and Federal Elections.

1. Must be registered on books for all elections.
2. Must have paid three years poll tax six months before election.
3. Poll tax payment may be made during any month of the year.

Federal Elections Only

1. May be registered on books for all elections, or for federal elections only.
2. Must have paid three years poll tax six months before election, or file a certificate of residence six months before election.
3. Certificate of residence must be filed after Oct. 1st of year prior to election.

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|---|--|
| <p>4. Poll tax payment requires no statement of residence, no witness or oath, no signature, no statement of intention not to remove from the city or county.</p> | <p>4. Certificate of continuing residence requires a written statement of residence, a witness or an oath, a signature and a statement that the voter intends not to remove from the city or county.</p> |
| <p>5. There is a receipt for poll tax payment.</p> | <p>5. There is no receipt for filing a certificate of continuing residence.</p> |

The above listed differences make it clear that the State is not doing what she ought to have done, that is to say, provided different qualifications for voters for state and federal elections. It has provided different qualifications for voters in the same election, if the election be for federal office. This is just exactly what the Constitution of the United States forbids.

We submit the Massachusetts analogy cited by Appellants to be without merit. The fallacy in their reasoning is this: Massachusetts does not require payment of a poll tax as a prerequisite for either registration or voting, and has annual registration. Now if Virginia had annual registration, and if a person could register and vote here without the payment of poll tax, the analogy might have merit; but, since neither condition prevails the analogy accordingly must fail.

II.

THAT THE DISTRICT COURT DID NOT ERR IN HOLDING INVALID THE SPECIAL ACTS COMPLAINED OF AS APPLIED TO PRESIDENTIAL ELECTORS.

As earlier stated, we do not agree with the question presented to this court involving presidential electors.

We should make our position unmistakably clear:

We contend, and have from the outset, that the Special Acts are in violation of Amendment XIV to the U. S. Con-

stitution, and §§42 U.S.C. 1983 and 1988, in that they deprive citizens within the jurisdiction of Virginia the equal protection of the laws, and abridge their rights, privileges and immunities.

The order of the District Court (R. 51-52) does not, as is implied from Appellants' brief, hold the statutes invalid simply because in violation of Article 1, Section 2, or Amendment XVII to the U.S. Constitution; rather the court states the order is based on "the reasons stated in its opinion this day filed", and that the Special Acts are "invalid because in violation of the Constitution of the United States." (R. 51)

The opinion (R. 42-50) takes great pains to point out the discriminatory effects of the Special Acts, and accordingly a holding that they are in violation of Amendment XIV and §§42 U.S.C. 1983 and 1988 is inevitable.

Quoting from the opinion:

"... Virginia has enacted an *additional* qualification for the Federal voter." (R. 43)

"Thus the Virginia statutes . . . imposing the *extra* test upon the Federal elector. . . ." (R. 43)

"Because of the 1963 Acts, with the poll tax removed from Federal elections, the electors in the two elections do not enjoy equal eligibility." (R. 47)

"The Federal elector must file a witnessed or notarized certificate of residence, not only declaring himself a current resident of Virginia, but also that he has been a resident since his registration. After giving his street number and his residence, he must give assurance of his intention not to remove from the city or county prior to the next general elections.

"On the other hand remittance of the poll tax by the State elector need not be accompanied by any express representation whatsoever of present residence. No affirmative proof has to be adduced that it has continued uninterrupted since his original registration. Thus the State elector's residency is accepted as unbroken from the date of his registration. No such presumption

is accorded the Federal voter." (R. 47)

"The argument is that the poll tax payment requires all that the certificate requires. This view cannot stand against the obvious fact that the payment of the poll tax does not entail a procedure which is trustworthy in vouching residence." (R. 47)

"That the tax payment will be accepted in satisfaction of residential requirements even in a Federal Election, despite its almost total deficiency as evidence of residence, reveals the certificate as an independent or super added qualification." (R. 47)

"We think the 1963 Acts do add a distinct qualification. The excess of exactions in themselves constitute a special qualification." (R. 48)

"... they [the 1963 Acts] unreasonably burden the duty of the Federal elector beyond that of a voter for the House of Delegates." (R. 48)

In addition to the above listed quotes from the opinion of the District Court we refer the court to the tabulated differences and inequalities set forth earlier in this brief.

Was the language of the District Court inartful in that it may not have spelled out that the Special Acts are a violation of Amendment XIV and its accompanying statutes?

We think not. The District Court did everything except draw a picture to set forth the inequalities of the Special Acts.

We submit the question posed this court (No. 2) is rather a strained construction of the opinion of the court below.

III.

THAT THE DISTRICT COURT ACTED PROPERLY IN NOT APPLYING THE DOCTRINE OF ABSTENTION.

(A). There is no pending litigation instituted at the instance of the State to seek a construction in state courts

of the statutes complained of. It is a matter of public record that many Virginia statutes have their validity tested by the Attorney General by way of mandamus under *Virginia Code*, Sec. 8-714 and similar statutes. (See annotations in *Virginia Code* and cases annotated.) Yet no such action was commenced by the State in this case. To the contrary, the State Board of Elections has proceeded to execute the Special Acts. Although these cases have been filed since February 20, 1964, no action has yet been commenced by state officials in the state courts to have the matter decided.

(B). It has been suggested that Appellees proceed under the Virginia Declaratory Judgment statutes, *Va. Code*, Sections 8-578, et seq.

This only suggests more delay. Not counting the time in the trial court, an appellant can legitimately take about six months during the pendency of an appeal. See *Va. Code*, Section 8-463, and *Rules of the Supreme Court of Appeals of Virginia*, Part 5. Time between a final order in a trial court, and an adjudication by our state Supreme Court, is about a year.

(C). The present case before this court involves the constitutional civil rights of voters of this state. The controversy is not limited to the type which requires that a definitive interpretation or construction of state statutes which are not clear on their face, be made by the courts of this state before it is ascertainable a constitutional controversy exists.

In this case Appellees have no way to test the validity of the legislative action by violating the same and in doing so requiring the state through its courts to enforce obedience to its statutes.

In *Harrison v. N.A.A.C.P.*, 360 U.S. 167, 79 S.Ct. 1025, 1030, 3 L.Ed. (2d) 1152, (1959) the Supreme Court reasons as follows:

"The present case in our view, is one which calls for the application of this principle, [abstention] since we are unable to agree that the terms of these statutes leave no reasonable room for a construction by the Virginia

courts which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem." 79 S.Ct. 1025, 1030.

The wording and effect of the statutes complained of in this suit are clear and unambiguous.

Further in *Harrison v. N.A.A.C.P.* is seen the reasoning of the court in upholding the abstention doctrine as follows:

"Because of its findings amply supported by the evidence, that the existence and threatened enforcement of these statutes worked great and immediate irreparable injury on appellees the District Courts' abstention with respect to Chapters 33 and 36 proceeded on the assumption that the defendants will continue to cooperate, as they have in the past, in withholding action under the authority of the statutes until a final decision is reached . . . ' 159 F. Supp, at page 534. In this Court counsel for the appellants has given similar assurances with respect to the three statutes presently before us, assurances which we understand embrace also the intention of these appellants never to proceed against appellees under any of these enactments with respect to activities engaged in during the full pendency of this litigation." 79 S.Ct. 1025, 1031.

This avenue of temporary relief pending any possible other litigation embracing a doctrine of comity is not available for Appellees herein. The damage suffered here cannot be held in abeyance during the pendency of other judicial pursuits.

The following offer was made to Appellants in the District Court in our reply brief at p. 12. The offer did not get a reply, and is *not* now renewed.

"At this point we should state that if the defendants will agree that all persons registered on either the registration books for all elections or for federal elections only, be allowed to vote in the 1964 elections without the payment of a poll tax or filing a certificate of continu-

ing residence, then we would not object to a stay, providing the federal courts retain jurisdiction and the right to finally adjudicate the matters at issue in these suits."

The deprivation of Appellees' rights is complete in its present state. This is the deprivation of a class as well as an individual right, a deprivation that will not be peculiar to the circumstances of individuals. This case is not subject to the reasoning followed in *Martin v. Creasey*, 360 U.S. 219, 79 S.Ct. 1034, 3 L.Ed. (2d) 1186, (1959) which set-forth the following:

"... among the concerns which have traditionally counseled a federal court to stay its hand are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the *premature* determination of constitutional questions. All those factors are present here.

"At least one additional reason for abstention in the present case is to be found in the complex and varying effects which contemplated state action may have upon the different landowners.

"... In the state court proceedings, the case of each landowner will be considered separately, with whatever *particular problems* each case may present." 79 S.Ct. 1034, 1037.

Appellees submit that their seeking of a determination of constitutional questions is neither particular nor premature. Their rights are *now* affected.

Appellants' motion to stay under the theory of abstention relied in part upon the case *Lassiter v. Taylor*, 152 F. Supp. 295, wherein a stay was granted.

"We think also, that administrative remedies provided by the act should be exhausted before action by the federal courts is invoked."

No effective administrative remedies are provided the Appellees herein.

We contend that the cases cited in support of Appellants' position, when considered in their various settings, and remaining cognizant of the facts of the immediate controversy, tend squarely to support Appellees' standing before this court.

The doctrine of abstention relied on by defendants is further developed in the recent decision of *McNeese v. Board of Education for Com. Unit Sch. Dist.*, 373 U.S. 668, 83 S.Ct. 1433 (1963). Here the court recognizing the doctrine of abstention says:

"We have previously indicated that relief under the Civil Rights Act may not be defeated because relief was not first sought under state law which provided a remedy. We stated in *Monroe v. Pape*, 365 U.S. 167, 183, 81 S.Ct. 473, 482, 5 L.Ed. (2d) 492.

"It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.

"The cause of action alleged here is pleaded in terms of R. S. Sec. 1979, 42 U.S.C. Sec. 1983, which reads

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceedings for redress."

After quoting this section the court briefly explains the same by continuing:

"The purposes were severalfold—to override certain kinds of state laws, to provide a remedy where state law was inadequate, 'to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice' (*Monroe v. Pape*, supra; at 174, 81 S.Ct. 477), and to provide a remedy in the federal courts sup-

plementary to any remedy any state might have, *Id.*, 180-183, 81 S.Ct. 480-482.

"We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court." 83 S.Ct. 1433, 1435, 1436.

Abstention as set forth in *Railroad Commission v. Pullman Company*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), is further revised in the recent decision in *England v. Louisiana State Board of Medical Examiners*, 84 S.Ct. 461 (1964). In the concurring opinion in the *England Case*, by Mr. Justice Douglas, is said:

"The *Pullman Case*, decided a little over 20 years ago launched an experiment in the management of federal-state relations that has inappropriately been called the 'abstention doctrine'

"I was a member of the Court that launched *Pullman* and sent it on its way. But if I had realized the creature it was to become, my doubts would have been far deeper than they were." 84 S.Ct. 461, 469, 470.

The court in the *England Case* sets forth the following rationale:

"There are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a Federal District Court to consider constitutional claims can be compelled, without his consent and through no fault of his own, to accept instead a state court's determination of those claims. Such a result would be at war with the unqualified terms in which Congress, pursuant to constitutional authorization, had conferred specific heads of jurisdiction upon the federal courts, and with the principle that 'When a federal court is properly appealed to in a case over which it has by law jurisdiction . . . the right of a party plaintiff to choose a federal court where there is a choice cannot be properly denied.' *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40, 29 S. Ct. 192, 195, 53 L.Ed. 382. Nor does anything in the abstention doctrine require or support such a re-

sult. Abstention is a judge-fashioned vehicle for according appropriate deference to the 'respective competence of the state and federal court systems.' *Louisiana P. & L. Co. v. Thibodaux*, 360 U.S. 25, 29, 79 S.Ct. 1070, 1073, 3 L.Ed. (2d) 1058. Its recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law. Accordingly, we have on several occasions explicitly recognized that abstention 'does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise.' *Harrison v. N.A.A.C.P.*, 360 U.S. 167, 177, 79 S.Ct. 1025, 1030, 3 L.Ed. (2d) 1152; accord, *Louisiana P. & L. Co. v. Thibodaux*, supra, 360 U.S. at 29, 79 S.Ct. at 1073, 3 L.Ed. (2d) 1058. . . .

"Thus in cases, where, but for the application of the abstention doctrine, the primary fact determination would have been by the District Court, a litigant may not be unwillingly deprived of that determination. The possibility of appellate review by this court of a state court determination may not be substituted against a party's wishes, for his right to litigate his federal claims fully in the federal courts." 84 S.Ct. 461, 464, 465, 466.

Appellees are deprived of equal protection of the laws which certainly constitutes a deprivation of rights or privileges secured by the Constitution. They are unwilling victims of a double standard, and by their complaint seek redress in the federal forum.

IV.

THAT THE DISTRICT COURT DID NOT ERR IN
OVERRULING APPELLANTS' MOTIONS TO DIS-
MISS.

A. Indispensable Parties.

In Virginia the local electoral boards and registrars are under the complete control of the State Board of Elections.

This is made amply clear by Appellees' exhibits (R. 55-69) in evidence in this proceeding where instructions, not advice, were given to local officials by the State Board of Elections.

The duties of the State Board of Elections are set out in Section 24-25 of the *Virginia Code* as follows:

"The State Board of Elections shall so supervise and co-ordinate the work of the county and city electoral boards and of the registrars as to obtain uniformity in their practices and proceedings and legality and purity in all elections. It shall make such rules and regulations not inconsistent with law as will be conducive to the proper functioning of such electoral boards and registrars, and may institute proceedings for the removal of any member of an electoral board or other election official and any registrar who fails to discharge the duties of his office."

In addition, the Board may require the purging of registrar's books in a county, city, or precinct, and if it is of the opinion that the public interest will be served, may request the Attorney General or other legal assistance to enforce the laws. The State Board of Elections prepares registrar's books, forms for voter registration, etc. (See *Virginia Code*, Sections 24-26 and 24-27).

The duties of the clerk of the court are purely ministerial in receiving, filing, and delivering the lists of treasurers and registrars. The clerk has nothing to do with the preparation of the lists, and his discretion in performing any act under the election laws is not involved.

The local electoral boards appoint the registrar, but all the registrar does is to admit the voters for registration and to keep a record of them.

In these cases the State Board of Elections can issue any rule or regulation in accordance with law for the supervision of the local electoral boards and registrars. Should the decision of the District Court be upheld all the State Board of Elections has to do is to direct the local electoral boards and registrars to take such action as has been declared

consistent with law in these cases. Despite protestation that it could not, the November, 1964 election was conducted with no uproar.

Appellants' entire argument concerning indispensable parties is based on the fact that the State Board of Elections is only a nominally superior governmental agency. We submit that such is not the case. By statute, the State Board of Elections, is given the power to *superintend* the work of local electoral boards and registrars. *Webster's New International Dictionary, Second Edition*, gives the following definitions of supervise: "To look over so as to read or revise; to peruse; scan; correct (obsolete)"; and then "to oversee for direction; to superintend; to inspect with authority." No reason has been given why the ordinary meaning of supervise ought not to be applied in this case.

B. *Henderson*. (Speaking in the present tense on the day the case was heard, May 12, 1964)

Henderson is a citizen, resident and registered voter of Fairfax County, Virginia. He is at present entitled to vote in all elections, and is Chairman of the Republican Party in Virginia. As such he has a real and vital interest in all elections conducted in this Commonwealth.

Henderson is but an individual in the mass of the qualified electorate, but as an individual in this mass he is immediately harmed or threatened with immediate harm when those of his class, as an electorate, must qualify to vote under the contested Virginia legislation. He has a presently existing case or controversy when the force of his present voting power is affected by existing legislation.

It is apparent that Henderson's ballot, which is his right as a presently qualified voter, is affected immediately by the present dual standard of qualification. This is not the same situation as *Poe v. Ullman*, 367 U.S. 497 81 S.Ct. 1752, 6 L.Ed. (2d) 989 (1961), the famous Connecticut contraceptive case, where an unasserted statute had lingered in effect, unapplied for some eighty years, only to be prematurely attacked. It is apparent that Henderson's rights are now affected by the legislation he calls into question. He is now

faced with an actual interference with his right. There is a justiciable controversy here in view of the patent invasion of his right by the Special Acts complained of. It is to just such a controversy that the federal judicial power extends.

As an individual Henderson has but one vote to cast in any election in which he may be qualified to vote. His vote, when counted, numbers but one of a class of similar votes, each only so strong as any other in relation to the total receivable. Any infringement on a potential vote directly affects the power of his and as such affects his enfranchisement.

Appellants would argue that "... he could not have been denied his franchise . . ." In the assessment of ones franchise is necessarily entwined the constitutional right to have the vote accurately reflect the intention of the qualified electorate. If a double standard of qualification, as is presently in existence in Virginia, is applied to the potential electorate, the resulting number of qualified votes is necessarily affected. Any such double standard is repugnant to the Federal Constitution and presents a present controversy which affected Henderson yesterday, affects Henderson today and will affect Henderson so long as the same is allowed to continue.

In the election for President, Vice President, U. S. Senator, and member of the U. S. House of Representatives from the Tenth District Henderson has an immediate real interest in the result of the election.

We maintain that Henderson has a real and present interest in the outcome of this fall's elections. He has a right to have the electors for President, Vice President, U. S. Senator, and the Member of the House from the Tenth District elected under constitutional statutes by an electorate which is constitutionally qualified.

V

CONCLUSION

Every difficulty, every problem, and every question in this case is not new. They are older than the United States

itself. The difficulty is that the problems are not now faced squarely, and with the fairness and candor exhibited by the gentlemen who were the architects of our federal system at the beginning of the Republic, and the architects of the Virginia system of suffrage established in 1902.

From the *Federalist* No. LXI (Hamilton), February 26, 1788, concerning the provisions of the United States Constitution on elections:

"And in relation to the point immediately under consideration, they ought to convince us that it is less probable that a predominant faction in a single State should, in order to maintain its superiority, incline to a preference of a particular class of electors, than that a similar spirit should take possession of the representatives of thirteen States, spread over a vast region, and in several respects distinguishable from each other by a diversity of local circumstances, prejudices, and interests."

From the *Federalist* No. LX (Hamilton) February 26, 1788:

"We have seen that an uncontrollable power over the elections to the federal government could not, without hazard, be committed to the State legislatures." And again in the same paper:

"The qualifications of the persons ~~who may~~ choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature."

From the *Federalist* LVII (Hamilton or Madison), February 19, 1788:

"Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are

to be the *same* who exercise the right in every State of electing the corresponding branch of the legislature of the State."

The Legislature, we contend, has wholly failed to consider the U. S. Constitutional provisions and their background, and has practiced outright discrimination against the voter in federal elections. The Acts are an obvious attempt by the Legislature, to provide an equally or more offensive hinderance to the exercise of suffrage than the one removed by the 24th Amendment. But to be valid, the same conditions must be applied to the State as to the Federal voter. This has not been done.

Accordingly, we submit the order of the District Court ought to be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, H. E. Widener, Jr., one of the attorneys for the Appellees herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of January, 1965, I served copies of the foregoing brief on the several Appellants hereto by mailing same in duly addressed envelopes, with first-class postage prepaid to their respective attorneys of record as follows:

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS

v.

LARS FORSSENIUS, ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA**

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the district court (R. 42-50) is not yet reported.

JURISDICTION

The judgment of the three-judge district court was entered on May 29, 1964 (R. 51). Notice of appeal to this Court was filed on June 11, 1964 (R. 52). Probable jurisdiction was noted on October 12, 1964 (R. 114). The jurisdiction of this Court rests on 28 U.S.C. 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Twenty-fourth Amendment is printed in the Argument, *infra*, p. 8. Section 24—

17.2 of the Virginia Code 1964 Supp.)—the only statute directly in suit¹—appears in the printed Record, p. 9. Related Virginia statutes are likewise printed in the Record, pp. 7-16.

QUESTION PRESENTED

Whether Section 24-17.2 of the Code of Virginia—which requires a voter in a federal election either to pay a poll tax or to file a witnessed or notarized certificate declaring himself a current resident of Virginia and a resident since his registration and giving assurance of his intention not to remove from the city or county prior to the next general election—contravenes the Twenty-fourth Amendment to the Constitution of the United States.

INTEREST OF THE UNITED STATES

For the first time, this Court is called upon to construe the Twenty-fourth Amendment to the Constitution of the United States. That Amendment—which frees federal elections from the poll tax—may be viewed as part of a continuing national effort to remove undue obstacles to full and fair participation in the electoral process, a concern reflected in the Civil Rights Acts of 1957, 1960 and 1964. Charged with enforcement of these statutory provisions, the United States is particularly sensitive to devices which may

¹ Section 24-17.2 is part of Chapter 2 of the Acts of the special 1963 session of the Virginia legislature, which is permanent legislation. Chapter 1 of the same session was temporary legislation for 1964, which has no continuing force. Accordingly, the judgment below is moot insofar as it invalidates portions of Chapter 1.

unconstitutionally restrict the franchise. See, e.g., *United States v. Mississippi*, No. 73, O.T. 1964; *Louisiana v. United States*, No. 67, O.T. 1964. Believing that the Virginia statute in suit would rob the Twenty-fourth Amendment of its promise, we deem it appropriate for the United States to express its views.

STATEMENT

A. THE PLEADINGS AND PROCEDURE

Prior to the adoption of the Twenty-fourth Amendment, the Virginia Constitution (Article II, Section 18) and statutes (Code §§ 24-67 and 24-17) provided a uniform rule for the registration and voting of electors in both federal and State elections, primary and general. The requirements were: (1) a minimum age of 21 years; (2) residence within the State for one year ~~and in the residence within the state for one year~~ and in the city or county for six months, and (3) payment "at least six months prior to the election * * * to the proper officer all State poll taxes [\$1.50 annually] assessed or assessable against him [the elector] for three years next preceding such election."

In 1963, Virginia enacted two statutes which became effective upon promulgation of the Twenty-fourth Amendment. These statutes (Va. Acts, 1963 Extra Sess., Chapters 1 and 2)² directed a division of the registration and voting qualifications into two classes, federal and State (R. 7, 8). Two changes

² Chapter 2 is now codified as Section 24-17.2 of the Code of Virginia of 1950 (Supp. 1964). Chapter 1—applicable to 1964 elections only—has not been codified.

were made in the law applicable to federal elections: (1) the payment of a poll tax as an absolute prerequisite to registration and voting was withdrawn (R. 8); and (2) a certificate of residence was required from the federal elector unless, "at his option," he chose to pay the poll tax (R. 9). The certificate must be filed with the treasurer of the voter's county or city no earlier than October 1 of the year immediately preceding that in which he offers to vote and no later than six months prior to the election (R. 9). The certificate must state the elector's street address; that he is currently a resident; that he has been one continuously from the time of his registration; and that he does not presently intend to remove from the city or county in which he is a resident prior to the next general election (R. 9-10). Thus, a citizen who has paid all the assessable poll taxes may vote in both federal and State elections. If he has not paid such taxes he cannot vote in a State election, but may vote in a federal election upon filing the certificate of residency.

The present appeal originated as two separate class actions attacking the foregoing provisions of the 1963 Virginia Acts as violative of Article I, Section 2, of the United States Constitution and the Fourteenth, Seventeenth, and Twenty-fourth Amendments.³ The complaints, which asked for declaratory and injunc-

³ Plaintiff Forssenius is Vice-Chairman of the Young Republican Federation of Virginia, a citizen of Virginia, and did not pay his tax for 1963. Plaintiff Henderson, is Chairman of the Republican Party of Virginia, a citizen of Virginia, and did pay his tax in 1963.

tive relief, named as defendants (appellants here) the three members of the Virginia State Board of Elections and, in one case, the County Treasurer of Roanoke County, Virginia, and, in the other, the Director of Finance of Fairfax County, Virginia (R. 1-5, 19-22). The jurisdiction of the district court was invoked pursuant to 28 U.S.C. 1331, 1343, and 2201, and the right to maintain the suits were asserted under 42 U.S.C. 1983 and 1988.

On March 23, 1964, appellants filed in each case a motion to stay any decision on the merits in order to give the Virginia courts an opportunity to resolve the issues and interpret the statutes attacked (R. 26-30). At the same time, motions to dismiss were filed. In *Forssenius*, Civ. No. 3897, the motion was based on a failure to join indispensable parties (R. 31). In *Harman*, Civ. No. 3898, the movants alleged, in addition, failure to state a claim upon which relief could be granted and failure to state a justiciable controversy (R. 33). Appellants also filed answers at the same time, which averred that the complaints failed to state a claim upon which relief could be granted or to state an actual controversy, and generally denied the other allegations (R. 35-39).

B. THE DISTRICT COURT'S DECISION

After trial before a statutory court of three judges—convened in accordance with the prayers in the complaints (R. 4, 22)—the court held that the certificate of residence required of federal electors in Virginia in lieu of a poll tax was an additional burden not required of State electors and thus a different “qual-

ification" in violation of the requirements of Article I, Section 2 and the Seventeenth Amendment. The court rejected appellants' argument that the qualification, *i.e.*, residence, remained the same, and that only the manner of proving the qualification was different. Overruling the contention that the local electoral board, the registrars and the clerks of court were indispensable parties, the court entered an order declaring the challenged portions of the 1963 Acts invalid and enjoining appellants from requiring compliance by an elector with such provisions (R. 51).

ARGUMENT

I

INTRODUCTORY

The court below, in invalidating the statutes in suit, held that they contravene Article I, Section 2 of the Constitution and the Seventeenth Amendment, which provide that electors for Representatives and Senators shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Conceding that a State is not precluded from retaining or prescribing the payment of a poll tax as an absolute condition of voting in State elections, the court concluded that under the Virginia statutes the qualifications for voting in federal and State elections differ because, in order to vote in federal elections, a voter must file a certificate of residence.⁴ In reach-

⁴ The court so held notwithstanding the fact that, by paying a poll tax, a federal elector could vote without being subjected to requirements different from those imposed on a State elector.

ing this conclusion, the court rejected appellants' argument that the certificate of residence requirement does not result in a variance of the *qualifications* for voting in State and federal elections, but only in the means of proving the underlying qualification, *i.e.*, residence.

We submit that this Court should avoid the far-reaching issue under Article I, Section 2, and the Seventeenth Amendment, for several reasons. *First*, Article I, Section 2, and the Seventeenth Amendment govern only *congressional* elections; they do not reach Presidential elections. Accordingly, those provisions alone do not seem to support that part of the judgment below that enjoins the use of the certificate in Presidential elections. *Second*, the issue of what constitutes a substantive "qualification" for voting—as distinguished from a procedure for ascertaining whether an individual possesses that qualification—has broad implications, particularly in relation to the power of Congress to regulate the electoral process—a power which Congress has exercised frequently in recent years in the Civil Rights Acts of 1957, 1960 and 1964. *Third*, as we presently will show, the statutes are clearly invalid under the Twenty-fourth Amendment, and it is, therefore, unnecessary to decide more.⁵

⁵ We do not discuss the procedural issues—the appropriateness of "abstention" in this case and the claimed indispensability of certain parties. It seems plain that both questions were correctly decided below.

II

THE STATUTE IN SUIT IS REPUGNANT TO THE TWENTY-FOURTH AMENDMENT

Section 1 of the Twenty-fourth Amendment provides:

The right of citizens of the United States to vote in any primary or other election for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Henceforth, of course, no State could directly bar the franchise to "federal electors" for failure to pay any tax. Thus far, Virginia complied. Upon ratification of the Amendment in January, 1964, new laws provided that payment of the poll tax—which was retained—would no longer be an *absolute* prerequisite to voting in "federal" elections. But, at the same time, the State invited its citizens to waive the benefit of the exemption by imposing a burdensome substitute requirement—embodying some of the evils of the traditional poll tax—on those who invoked the Twenty-fourth Amendment. The question here is whether the exaction of such a price for claiming a constitutional immunity may stand.

The answer is not in doubt. Familiar principles bar the imposition of a penalty on those who would exercise a right guaranteed by the Constitution. See *Frost & Frost Trucking Co. v. Railroad Commission of Cali-*

formia, 271 U.S. 583, 592;⁶ *Terral v. Burke Construction Co.*, 257 U.S. 529, 532. Moreover, here, as in the Fifteenth Amendment, the Constitution does not alone bar an outright "denial" of the franchise; it also expressly guarantees that the right to vote shall not be "abridged."⁷ The Twenty-fourth Amendment, too, "hits onerous procedural requirements which effectively handicap exercise of the franchise" by a class of qualified voters. Cf. *Lane v. Wilson*, 307 U.S. 268, 275. Thus, in *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss.), the court struck down, as an impermissible abridgement of the immunity conferred by the Twenty-fourth Amendment, a comparable Mississippi provision requiring federal electors who would not pay the traditional tax to obtain an annual "poll tax receipt" (albeit without payment).⁸ The same principle dictates a like result here.

⁶ The Court said in *Frost*. (271 U.S. at 593):

It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold.

⁷ The language of the Amendment was chosen advisedly. As Representative Halpern, one of its proponents, noted, "it is broad enough to prevent the defeat of its objectives by some ruse or manipulation of terms." 108 Cong. Rec. 17669.

⁸ In a *per curiam* opinion, the statutory three-judge court (Circuit Judge Bell and District Judges Clayton and Cox) stated (234 F. Supp. at 746):


● It may not be gainsaid from any fair reading and interpretation of the act that its onerous requirements are occasioned solely by reason of the failure of the registered

It remains only to show that the Virginia statute in suit in fact imposes "onerous [procedural] requirements" on those who refuse to surrender their constitutional right to vote in federal elections without paying the prescribed poll tax. At the outset, however, it is important to emphasize that the question here is not whether the new requirement would be "reasonable" if applied to all voters without reference to the Twenty-fourth Amendment. We may assume it would be. Rather, since Virginia establishes differ-

voter to pay his poll tax. Such a voter after 1964, must have two such poll tax receipts, both dated on or before February 1 for the two years next preceding the election at which he offers to vote. He has thus been excused literally from paying the tax as such but by reason of the non-payment thereof he has been required to get the requisite poll tax receipts within a fixed time * * *.

The word "abridge", according to Webster's New International Dictionary, Second Edition, means to diminish or curtail; to deprive, to cutoff. When the word is used in connection with and following the word "deny", it means to circumscribe or burden. It was the clear intention and purpose of the Twenty-fourth Amendment to the Federal Constitution that neither the United States, nor any state should impair the vested right of a duly registered voter to vote by reason of his failure to pay a poll tax. No state is thus permitted to circumscribe or burden or impair or impede the right of a voter to the free and effective exercise and enjoyment of his franchise in any election for a Federal official "by reason of failure to pay any poll tax", as the amendment expressly provides.

The court also held that the Mississippi statute discriminated against federal exemptees, since persons exempted by Mississippi law from paying the poll tax could vote merely by obtaining a single exemption slip from the county clerk, good for all time—a procedure less onerous than the requirement, applicable to federal exemptees, that a yearly "poll tax receipt" be obtained. (234 F. Supp. at 746).



ent eligibility rules applicable to federal electors alone—and only those who assert their exemption from the poll tax—the question is whether those rules impose a substantial burden which infringes the immunity conferred by the Amendment. Nor does it save the alternative requirement for federal electors if it is no more onerous, or even somewhat less onerous, than the poll tax. For federal elections, the poll tax is abolished absolutely as a prerequisite to voting and no “equivalent,” or milder “substitute,” is permissible. Any device which effectively subverts, even in part, the effectiveness of the Twenty-fourth Amendment must fall under it.

There can be no question that the statute in suit erects a real obstacle to voting in federal elections. As already noted, the new requirement for those who would participate in choosing their national officers without paying the poll tax is that they file annually, within a stated interval ending six months before the election, a notarized or witnessed certificate attesting that they have been continuous residents of the State since the date they registered (perhaps many years ago, under Virginia's system of permanent registration) and will reside in their present locality until the forthcoming election (at least six months hence). Va. Code, § 24-17.2 (R. 9-10). It is not clear how one obtains the necessary certificate form. The only provision made is for distribution of the form to county and city court clerks and local registrars. Va. Code, § 24-28.1 (R. 10-11). So far as appears, then, the federal elector who would invoke his Twenty-fourth

Amendment right must take the initiative of obtaining the form from one of these officials, complete it, have it witnessed or notarized, and deliver it "in person or otherwise" to a different official, the county or city treasurer. See Va. Code, § 24-17.2(a)-(b) (R. 9). That is plainly a cumbersome procedure. In effect, it amounts to an annual re-registration, which Virginians so sharply contrast with the "simple" poll tax system.⁹ But the most serious obstacle is perhaps the requirement that all this be done within a specified interval, at least six months prior to the election involved. For many, at least, it must seem far preferable to conform to the old familiar practice of mailing in the \$1.50 poll tax when the bill arrives at the door, some six months before the cut-off date.¹⁰

As we understand them, however, appellants do not deny that the new residence certificate alternatively required of federal electors amounts to a substantial

⁹ See, e.g., the testimony of Judge Old before the House Judiciary Committee, defending the poll tax system as enabling Virginia "to avoid the burdensome necessity for annual registration." Hearings on S.J. 29, 87th Cong., 2d Sess., p. 81. See, also, *id.*, pp. 98-99 (Attorney General Button); 108 Cong. Rec. 4532 (Senator Byrd); 108 Cong. Rec. 4641 (Senator Robertson); R. 73, 76 (Governor Harrison).

¹⁰ The requirement that the poll tax be paid "personally" by the voter (Va. Code, § 24-17, R. 8) is not construed as compelling him to physically appear "in person" before the local treasurer. In practice, at least, it may be simply mailed in. See Hearings, *supra*, p. 81 (Judge Old). The poll tax bill is mailed to the residence of the prospective voter (App. Br. 19, 22) some time in November and payment—for election qualification purposes—may be delayed until the following May. See Hearings, *supra*, pp. 95-96 (testimony of Asst. Atty. Gen. Lee and Congressman Tuck).

requirement. Their defense is, rather, that it is a *necessary* substitute proof of residence, serving the same function as the poll tax. On the face of it, the argument is remarkable, since it posits that the poll tax is nothing more than a convenient means of proving residence¹¹ and assumes that the Twenty-fourth Amendment, though outlawing the poll tax for federal elections, would condone the same result accomplished by a new expedient. It is difficult to see why the claimed similarities in purpose and effect between the poll tax and the residence certificate are thought to save, rather than condemn, the new requirement. But, in any event, the underlying premise of the argument—that the poll tax serves as a trustworthy test of continuing residence—is demonstrably false, and, without that foundation, the whole structure collapses.

On this point, the emphatic statement of the court below—composed of three Virginia judges—is persuasive (R. 47):

The argument is that the poll tax payment requires all that the certificate requires. This view cannot stand against the obvious fact that

¹¹ This characterization of the poll tax is, of course, at odds with the arguments by Virginia's spokesmen before the Congress to the effect that the Twenty-fourth Amendment, would repudiate the long-standing constitutional rule that the States retained the prerogative of fixing (albeit indirectly) the "qualifications" of electors for federal Representatives and Senators. See, e.g., 108 Cong. R. 4528-4530 (Senator Byrd), 4635-4644 (Senator Robertson); Hearings, *supra*, pp. 75-76, 78 (Lieutenant-Governor Godwin); pp. 85-86, 89 (Hugh V. White, Jr., Director of Virginia Commission on Constitutional Government).

the payment of the poll tax does not entail a procedure which is trustworthy in vouching residence. That the tax payment will be accepted in satisfaction of residential requirements even in a Federal election, despite its almost total deficiency as evidence of residence, reveals the certificate as an independent or superadded qualification.

There is no rebuttal. The suggestion is that voluntary payment of the tax six months before an election is to be expected only of residents who intend to remain in the State. But the same is true of registration or voting: normally, only residents with some expectation of remaining will take the trouble to register and vote. Nor is the timing of the payment relevant to residence. The only real claim is that the poll tax serves "to prevent fraudulent voting by persons once registered who [are] no longer residents" (App. Br. 3). In short, according to appellants, the requirement strikes at those few former eligible voters, still registered, who have moved away but might wish to return to vote without having re-established residence. We may be permitted to doubt how many such determined persons exist. But, whatever their number, are these "poll-crashers" likely to be deterred by the payment of a nominal tax which can be mailed in in advance?

The plain fact is that the poll tax is not a proof of residence. Indeed, on its face, it does not purport to be. Unlike the certificate devised for federal electors, payment of the tax is accompanied by no declaration of prior residence or of intent to remain. The

poll tax does share one important characteristic with the new certificate, however. It is this: that, in both instances, the requirement of action six months before casting a ballot tends to eliminate from the franchise a substantial number who do not plan so far ahead, at a time when political campaigns are still dormant and election day is half a year away. That effect, recognized as an evil of the poll tax which the Twenty-fourth Amendment was meant to wipe away,¹² is now preserved.

In sum, the new requirement attempts to perpetuate the practical barrier erected by the poll tax regime. It accordingly offends the Twenty-fourth Amendment.

CONCLUSION

The judgment below should be affirmed.
Respectfully submitted,

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JANUARY 1965.

¹² See Hearings, *supra.*, pp. 14-15, 52, 95.

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REPLY BRIEF FOR THE APPELLANTS

IN THE
Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

v.

LARS FORSSSENIUS, ET AL.

Appeal from the United States District Court
For the Eastern District of Virginia

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IN THE
Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

v.

LARS FORSSENIUS, ET AL.

**Appeal from the United States District Court
For the Eastern District of Virginia**

REPLY BRIEF FOR THE APPELLANTS

PRELIMINARY STATEMENT

The Brief for Appellees filed herein on January 7, 1965, raises certain points not covered by the initial Brief for the Appellants, and this Reply Brief is being filed to answer such points.

ARGUMENT

I

The Certificate of Residence Is Not a Qualification for Voting.

The uncontradicted record herein shows that payment of a poll tax has been the traditional means of keeping Virginia's roll of permanently registered voters up to date, as such payment serves as proof that the person paying has not abandoned his legal residence in Virginia (R. 76-77, 85, 97). That such payment does in fact prove legal residence

was demonstrated in the initial Brief for the Appellants at pages 21-23, and the argument need not be repeated here.

Having found it impossible in the proceedings below to offer any evidence contradicting the plain facts as revealed by the record (as it was their burden as plaintiffs to do), the Appellees now attempt to confuse the real issues in this case by seeking to discredit the Commonwealth of Virginia and its highest elected officials. Unfounded and unsupported accusations reappear throughout the Brief for Appellees and their legal memoranda filed with the Court below. Examples are found in the unfounded charges that "Virginia seems to be determined to disregard the express provisions of the U. S. Constitution" and "[Virginia] wished to discriminate against the federal voter." (Brief for Appellees, pp. 6, 9.) Other examples are discussed in detail below.

A. THE ALLEGED INTENT OF THE POLL TAX IS IMMATERIAL.

The Appellees attempt to divert the Court's attention from the real issues by citing the *Debates of the Virginia Constitutional Convention of 1901-02*, particularly the statements of some of the more extreme delegates as to what they *intended* to be the effect of making poll tax payment a qualification of the right to vote. But what those gentlemen *intended* payment of the poll tax to be and what it in fact, *became* are two entirely different matters, and the latter alone is germane to the issues herein.

The *Debates* do show that some of the delegates to the Constitutional Convention intended that the poll tax requirement should operate to deny the franchise to Negroes, since most of them were presumably unable at that time to pay even the most modest tax. But it is to be noted first, that racial discrimination is not an issue in these cases and second, that regardless of what some of the delegates to

the Constitutional Convention may have hoped, the poll tax requirement has long since ceased to be an impediment to Negro voting. See *U. S. Civil Rights Comm'n, 1959 Report*, at 118. Indeed, the fact that it would not function as such an impediment was noted some forty-one years ago. See Tunstall, *Wanted: A Constitutional Convention*, 10 *Va. L. Reg., N.S.* 167, 174 (1924).

Furthermore, it has been held that what the Virginia poll tax requirement may have been intended by some to accomplish in 1902 is immaterial, even in a case where the poll tax was directly attacked by otherwise qualified Negroes. The Court said, in *Butler v. Thompson*, 97 F. Supp. 17, 21 (E.D. Va.), *aff'd per curiam*, 341 U.S. 937 (1951):

To plaintiff's second contention—that the draftsmen of the Virginia Constitutional Convention were prompted by evil motives and that this alone invalidates the provisions of this Constitution and subsequent Virginia laws requiring the payment of poll taxes as a prerequisite to voting—there are many answers.

It is admitted that some of the most vocal and violent members of that Convention expressed a desire and purpose to eliminate the Negro as a voter in Virginia. Yet even the most violent of these also expressed an intention to bring about this result by means that were valid under the Federal Constitution or Federal laws. And the expressions of these few can hardly be taken as necessarily voicing the dominant spirit of that Convention. For other voices were raised in the Convention to advance ideas couched in quite a different key.

.... Finally, in this connection, it is well settled that a law that is fair on its face and is also fairly administered is not rendered invalid by the evil motives of its draftsmen.

To repeat, the issue for consideration by this Court is what the poll tax has become in fact and in practice, not

what some intended it to be. The record establishes conclusively that voluntary payment of the poll tax has become proof of continuing legal residence, a necessary and convenient adjunct to Virginia's system of permanent registration. (R. 76-77, 85, 97).¹ There was no need, prior to the ratification of the Twenty-fourth Amendment to the Constitution of the United States, to make this fact explicit by legislative or executive pronouncement, for until that time poll tax payment could and did serve as proof of residence as a matter of practice in connection with administration of the election laws in *all* elections.

1. Most states in which permanent registration obtains have some means of verifying the continuing satisfaction of residence requirements by registered persons. The usual means, in states which have not made poll tax payment a voter qualification, is to strike the names of such persons from the registration rolls if they have not voted for a period varying from state to state. For example, in Indiana, registration will be cancelled for failure to vote at the last preceding primary or general election, unless the affected registrant certifies that he still resides at the residence from which he was registered and that he is still a legal voter of his precinct. See *Ind. Stat. Ann.* § 29-3418 (repl. vol. 1949). Likewise, in North Carolina, it is provided that in order to purge the permanent registration list of persons who "have become unqualified since registration," the local election officials shall strike from the lists the names of all persons who have failed to vote for a period of six years. See *N. C. Gen. Stat. Ann.* § 163-31.2 (Supp. 1963). But in Virginia, Alabama and Mississippi, where registration is permanent and payment of a poll tax was, until the Twenty-fourth Amendment was ratified, required in all elections, there is no statutorily specified means of keeping the permanent registration rolls up to date. The reason for the omission in Virginia is, of course, that the poll tax list has served in practice as a convenient means of verifying continuing residence. Possibly the same reason explains the omission in Alabama and Mississippi as well. In Texas and Arkansas, the other two states in which poll tax payment was a voter qualification, there were no provisions for voter registration; in Arkansas, the list of poll tax payers served as a registration list, see *Ark. Stat. Ann.* § 3-118 (repl. vol. 1956), while in Texas, the poll tax receipt, which had to be presented at the polls, provided a certification of the taxpayer's residence. See *Tex. Election Code*, Art. 5.14 (1952). For a summary of the voter qualification laws of all the states in effect in 1962, see *Hearings before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary*, 87th Cong. 1st Sess. pt. 5, at 997-1060 (1962).

Ratification of the Twenty-fourth Amendment, however, as the Appellants noted in their initial Brief at page 14, made it necessary to provide for an alternate method of proving residence for those voters who elect not to pay the poll tax. The Virginia General Assembly also authorized such voters to continue to use the traditional method if they chose to do so; thus for the first time the traditional method of proving residence by voluntary payment of poll taxes was embodied in a statute. It is not so, however, as the Appellees assert at page 11 of their Brief, that "the annals of the Commonwealth do not reveal any mention of [poll tax payment being] proof of residence until November 1963." See, to the contrary, *Williams v. Commonwealth ex rel. Smith*, 116 Va. 272, 81 S.E. 61 (1914); *Dotson v. Commonwealth*, 192 Va. 565, 66 S.E. 2d 490 (1951).

Thus, to summarize, the legislative history of the Special Acts as revealed by the record herein stands clearly and uncontrovertibly to the effect that payment of a poll tax has become as a practical matter a means of proving continuing voting residence in Virginia. The Appellees failed to prove the contrary below, and their present argument, being bottomed upon immaterial assertions that the poll tax might have been intended by some delegates to the 1902 Constitutional Convention to accomplish some other purpose, must fail as well.

B. WHAT VIRGINIA MIGHT HAVE DONE IS IMMATERIAL.

The portion of the Appellee's Argument entitled "Has Virginia had Time?" is also immaterial and misleading, and it should be disregarded. This Court is being asked to pass upon the validity of what Virginia has in fact done; what it might have done is plainly irrelevant. After much study and deliberation, the 1963 Extra Session of the Virginia General Assembly enacted the Statutes Involved, which

in its judgment were the best available means of dealing with serious administrative problems created by the impact of the Twenty-fourth Amendment upon the thoroughly established system of permanent voter registration. The Statutes Involved did not even go into effect until the 1964 Regular Session of the General Assembly was drawing to a close, and they have been *sub judice* ever since the day after their effective date. That the General Assembly might, at a session after the 1963 Extra Session, have considered "constitutional changes concerning poll tax" does not relate to any of the issues in these cases.

C. *Pope v. Williams* IS MISINTERPRETED BY THE APPELLEES.

The Appellees have interpreted *Pope v. Williams*, 98 Md. 59, 56 Atl. 543 (1903), *aff'd*, 193 U.S. 621 (1904), to stand for a proposition categorically rejected by the Maryland court in its opinion and not passed upon by this Court in its opinion affirming the Maryland court's judgment. The Appellees appear to have confused the two opinions, and to have misunderstood the purpose (as did the court below) for which the case was cited by the Appellants. The Appellees say, at page 8 of their Brief:

The Maryland statute was upheld on the ground that indication of residency by so registering was a qualification, and subject to control by the state.

But what did the Maryland court say? Its opinion declares, 56 Atl. at 544:

Nor does the statute impose qualifications for voting, other than those prescribed by the Constitution. It leaves those qualifications precisely as they were before. It deals exclusively with the evidence necessary to establish residence, by providing what the evidence of residence shall be.

Thus, if the Appellees were referring to the Maryland court's opinion, it is obvious that they are utterly wrong. The Appellants cited the *Pope* case only to illustrate the principle that as a matter of state law, which is controlling in such matters, to require proof of voting residence is not to create a voter qualification. This principle is fully borne out by the Maryland court's opinion.

Did this Court say anywhere in its opinion that the Maryland statute created a qualification? Indeed, it did not; in fact, the word "qualification" nowhere appears in its opinion. The sole question decided by this Court in the *Pope* case was whether the statute in question, regardless of what it might or might not do as a matter of state law, violated the "citizenship" or "equal protection" clauses of the Fourteenth Amendment, or was repugnant to the "general spirit" of the Federal Constitution or the "fundamental rights" of citizens. 193 U.S. at 624-25. This Court held, *id.* at 633:

We are unable to see any violation of the Federal Constitution in the provision of the state statute for the declaration of the intent of a person coming into the State before he can claim the right to be registered as a voter. The statute, so far as it provides conditions precedent to the exercise of the elective franchise within the State, by persons coming therein to reside (and that is as far as it is necessary to consider it in this case), is neither an unlawful discrimination against any one in the situation of the plaintiff in error nor does it deny to him the equal protection of the laws, nor is it repugnant to any fundamental or inalienable rights of citizens of the United States, nor a violation of any implied guaranties of the Federal Constitution.

It is thus clear that the Appellees have erroneously interpreted the *Pope* case at each of its stages of decision.

**D. THE APPELLEES' COMPARISON OF THE TWO METHODS
OF PROOF PROVIDED FOR IN THE STATUTES INVOLVED
IS ERRONEOUS AND MISLEADING.**

It is well to introduce this portion of the Argument by pointing out to the Court a fact which is plain from the wording of the Statutes Involved, but which was disregarded by the court below and by the Appellees in their Brief. This fact is that the Statutes Involved provide alternate methods of proving residence, *either* of which is applicable to voters in *both* types of elections, state and federal. It is improper to say that the certificate of residence method applies only to the federal voter, or conversely that the poll tax method applies only to the state voter. To be sure, in the vast majority of cases, voters in state elections will prove their residence by paying their poll taxes. For that matter, the Appellants would venture that if the Statutes Involved are allowed to become operative, the vast majority of voters in federal elections will also elect to prove their residence by paying their poll taxes. But the Appellants submit that in a very significant number of cases, voters in state elections will prove their residence by filing the certificate (this would appear to be permissible under the terms of the lower court's Final Order (R. 51), which voids the Statutes Involved only in the elections specified therein), and that it is therefore erroneous to make a rigid state election-poll tax, federal election-certificate classification and to assert, as the Appellees and the court below appear to have asserted, that the certificate is a mere superfluity in state elections and consequently explainable only as a sinister attempt on the part of the Commonwealth to hinder the federal voter.

It is a well-known fact that thousands of members of the armed services cast their ballots in elections held in Virginia. By Article XVII, Section 2, of the Constitution of Virginia, these persons are exempt from assessment with the

poll tax "for all years during a part of which they are hereafter engaged in such service." It is not only conceivable but highly likely that any number of registered voters of Virginia, having entered the armed service for a period of three or more years, will resume their physical residence in Virginia after their discharge and seek to vote in the next state or local election. But since they will not have been assessable with the poll tax for any of the three years next preceding the election year, they will not have proved their residence by paying their poll taxes as provided in the Statutes Involved, and will now be able to do so by filing the certificate of residence.

The fact that the certificate of residence will thus apply to such voters in state elections saps most of what little validity the opinion of the court below and the Appellees' arguments may have had. If the certificate of residence were a "qualification" for federal voters alone, then a state voter would never be required to file it. But as has just been demonstrated, a significant number of state voters will in all probability file the certificate rather than use the alternate means of proving residence. Both by their terms and in practice, the Statutes Involved do no more than establish alternate means of proving residence, applicable to *all* voters in *all* elections held in Virginia. It is plain and fundamental error to single out the certificate of residence, to call it a "qualification" considered separately, when all pertinent state decisional law is to the contrary, or when considered in comparison with its alternate, poll tax payment, which proves precisely what is sworn to in the certificate, and to say that it applies only to federal voters, when it manifestly does not, and to conclude that it thus violates Article I, § 2 and the Seventeenth Amendment of the Constitution of the United States. Yet this is exactly what the court below has done, and it seems to be what the Appellees are presently arguing.

The Appellants submit that the table prepared by the Appellees, comparing the legal requirements for election of the House of Delegates and of federal officers is incomplete and misleading, and we offer for consideration by the Court the following table, which more accurately reflects the applicable law.

Electors of the House of Delegates

1. Must be registered under *Va. Code* § 24-67 (requiring poll tax payment as a condition precedent) *Va. Const.* § 18; *Va. Code* § 24-17.
 2. Must have paid poll taxes, if any, assessable for the three years next preceding election year, at least six months prior to election. *Va. Const.* § 18.
 3. Must be at least 21 years old. *Va. Const.* § 18.
 4. Must have been residents of the state at least one year and of their political subdivision at least six months prior to election. *Va. Const.* § 18.
- A. Must prove state and local residence by either
- (i) paying poll taxes, if any, assessable for the three years next preceding election year, at least six months prior to election, or, at their option,
 - (ii) filing certificate of residence no earlier than October 1 of year preceding election year and no later than six months prior to election.
- Va. Code* § 24-17.2

Electors of Federal Officers

1. Must be registered under either *Va. Code* § 24-67 or § 24-67.1 (omitting poll tax payment, which may no longer be required in light of *U. S. Const. Amend. XXIV*) *Va. Const.* § 18; *Va. Code* § 24-17.1.
 2. No poll tax payment required. *Va. Code* § 24-17.1 (reflects change in law effected by *U. S. Const. Amend. XXIV*).
 3. Must be at least 21 years old. *Va. Const.* § 18.
 4. Must have been residents of the state at least one year and of their political subdivision at least six months prior to election. *Va. Const.* § 18.
- A. Must prove state and local residence by either
- (i) paying poll taxes, if any, assessable for the three years next preceding election year, at least six months prior to election, or, at their option,
 - (ii) filing certificate of residence no earlier than October 1 of year preceding election year and no later than six months prior to election.
- Va. Code* § 24-17.2

There is no need to repeat the argument previously made in the Brief for the Appellants that the acts of assessment with and payment of poll taxes prove inherently that which must be sworn to in the certificate, and that the differences between the two methods of proof, so heavily stressed by the Appellees, are purely formal and unsubstantial. The Appellants find it remarkable, however, that the Appellees, at one point in their Brief (at pages 13-14) insist that the formal *similarities* in administrative treatment accorded by the Special Acts (for obvious reasons of administrative economy) to the lists of persons who have paid poll taxes and to the lists of persons who have filed certificates mean that the certificate is a qualification, while at another point (page 15), they insist that the formal *differences* between the two methods of proof mean that the certificate is a qualification. Is this not blowing hot and cold in the same breath?

E. THE MASSACHUSETTS ANALOGY IS APPROPRIATE.

The analogy of *Mass. Gen. Laws Ann.* ch. 51, § 43 (1958), is, contrary to what the Appellees have asserted, most appropriate. It is immaterial that, in Massachusetts, poll tax payment is not an elector qualification. The material points are that, just as Virginia has for years accepted poll tax payment, Massachusetts will accept a tax bill or notice as proof of voting residence of a male voter, and further, that Massachusetts will accept it as such proof, in lieu of a certificate of such voter as to his residence. The Appellees' attempt to distinguish this analogy on the ground that poll tax payment is not a voter qualification in Massachusetts is quite as futile as an attempt to distinguish it on the ground that women need not pay a poll tax in Massachusetts would have been.

II

**The Statutes Involved Do Not Violate the Equal Protection
Clause of the Fourteenth Amendment.**

Lurking in the Appellees' argument on the merits (part I of their Brief) and coming into the open in their argument on the scope of the Final Order of the court below (part II of their Brief) and in their rephrasing of Question 2 of the Questions Presented (Appellees' Brief, page 2), is the contention that the Statutes Involved discriminate against the federal voter, deny him equal protection of the laws, and are therefore invalid under the Fourteenth Amendment. The Appellees are forced to make this argument—traditionally the "last resort of constitutional arguments," *Buck v. Bell*, 274 U.S. 200, 209 (1927) (Holmes, J.)—explicit, because they must realize that without it, the improper extension by the court below of its Final Order to elections of the federal executive cannot stand. (See Brief for the Appellants, pp. 25-26.) Of course, it is clear as day that the court below based its judgment solely and exclusively upon Article I, § 2 and the Seventeenth Amendment (R. 43). The Fourteenth Amendment is not cited once in its opinion (R. 42-50). But even if the court below had found that the Statutes Involved violate the Fourteenth Amendment, its finding would have been as erroneous as the argument presently being made by the Appellees.

In the first place, the Statutes Involved, by their plain wording, apply not to federal voters alone, or to state voters alone, or to both separately, but rather to *all* voters indiscriminately in *all* elections—they comprehend the entire electorate in Virginia (R. 9). Their purport is quite simple: every person offering to vote in every primary or general election held in the state must prove his residence either by filing the certificate of residence or by paying his poll taxes. The Appellants have previously demonstrated the

fallacy in classifying the electorate into state voters, who alone, it is claimed, will prove their residence by paying poll taxes, and federal voters, who alone, it is also claimed, will prove their residence by filing the certificate. Such a classification has no foundation in the language of the statutes or in fact, and absent classification or distinction between persons in law or in practice, there is no initial foundation at all for an "equal protection" argument. It is so well settled that citation of authority is unnecessary that legislation affecting all equally within the sphere of its operation does not deny equal protection. The Statutes Involved require every voter in the state of Virginia to prove his residence, by either one of two rationally interchangeable methods therein provided for; they act with equality upon all within their ambit; and consequently they do not violate the Fourteenth Amendment.

But even if it could be said that the Statutes Involved do effectively classify the electorate into state and federal voters, and require the federal voter to prove his residence only by filing a certificate of residence (which is plainly not the case), they would still be valid under the Fourteenth Amendment. It must be remembered that not all classifications are proscribed thereby, but only those made without reason or upon an irrational basis. As this Court observed in *New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 578 (1938):

No question . . . could be made . . . as to the right of a state . . . to enact laws or ordinances based on reasonable classification of the objects of the legislation or of the persons whom it affects. "Equal protection" does not prohibit this. Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. . . . Indeed, it has long been the law under the 14th Amendment that "a distinction in

legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it. . . ."

And more recently, in *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961), it was said:

Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

An example of these principles in application in a case substantially indistinguishable from what the Appellees say the present cases are is found in *Pope v. Williams*, 193 U.S. 621 (1904), *affirming* 98 Md. 59, 56 Atl. 543 (1903), discussed briefly above. The statute in question in the *Pope* case provided that every person moving into the State of Maryland was required, as a condition precedent to being permitted to register to vote, to indicate his intent to become a resident by recording it in an official record book kept for that purpose. The statute thus by its express terms affected only a limited portion of the entire Maryland electorate, as, according to the Appellees, the Statutes Involved affect only voters in federal elections in Virginia. The petitioner in *Pope*, being a member of the affected class, argued, as the Appellees presently argue, that the classification offended the equal protection clause. This Court rejected the argument.

While this Court's reasoning on the petitioner's equal protection claim was not articulated so explicitly as might

As desired, the Appellants submit that the Court rejected the claim because there was a reasonable basis in fact for the classification complained of. Maryland could not be sure that persons having merely a recently acquired physical presence in the state also had the intent necessary for establishing residence there for purposes of qualifying to register and vote. Consequently, the challenged statute was enacted to insure that such persons did in fact possess the required intent. See the opinion of the Maryland Court of Appeals, 56 Atl. at 544. As complete acquisition of voting residence by newly arrived persons could reasonably be doubted by the state, it could reasonably enact class legislation affecting such persons alone, requiring them to prove the element of residence doubted to exist, without offending the equal protection clause.

The Statutes Involved, even conceding *arguendo* the Appellees' distorted interpretation of them, may be harmonized with the equal protection clause on exactly the same basis. Prior to ratification of the Twenty-fourth Amendment, Virginia could be certain that all permanently registered persons voting in federal elections in the state were qualified residents because they could and were required to pay their poll taxes prior to the election, thus proving their continuing satisfaction of Virginia's residence qualifications. The Twenty-fourth Amendment, however, made the system unworkable: Federal voters could no longer be required to pay poll taxes, and just as Maryland in the *Pope* case could not be certain that new arrivals were *bona fide* residents, Virginia no longer had any means of verifying the continuing residence of persons offering to vote in federal elections. Accordingly, just as Maryland was upheld by this Court without hesitation in the *Pope* case in enacting a statute affecting only the class (new arrivals) as to which it was reasonably uncertain, requiring members of the class

to eliminate the uncertainty in the manner provided, Virginia should be upheld even if it had enacted a statute affecting only a class (federal voters who have not paid their poll taxes) as to which it is reasonably uncertain, the uncertainty being eliminated in the manner provided in the Statutes Involved.

Of course, the Statutes Involved are not restricted in their operative effect to requiring federal voters and no others to file the certificate of residence, as the Appellees would have this Court believe. On the contrary, the Statutes apply to every voter in every election, offering to all two alternate methods of proof. But, as the foregoing argument has shown, even if the Statutes Involved were so limited, the applicable principles of the law, as illustrated by *Pope v. Williams supra*, dictate that they should not be held to violate the Fourteenth Amendment.

Respectfully submitted,

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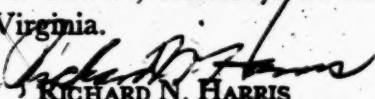
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PROOF OF SERVICE

I, Richard N. Harris, one of the attorneys for the Appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of January, 1965, I served copies of the foregoing Reply Brief for the Appellants on the several Appellees hereto by mailing same in duly addressed envelopes, with first-class postage prepaid to their respective attorneys of record as follows: H. E. Widener, Jr., Esq., Widener & Widener, Attorneys at Law, Reynolds Arcade Building, Bristol, Virginia; L. S. Parsons, Jr., Esq., Parsons & Powers, Attorneys at Law, Maritime Tower, Norfolk, Virginia.


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FEB 18 1965

**REPLY BRIEF FOR THE APPELLANTS TO THE
BRIEF FOR THE UNITED STATES AS AMICUS CURIAE** **DAVIS, CLERK**

**IN THE
Supreme Court of the United States**

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

v.

LARS FORSSENIUS, ET AL.

**Appeal from the United States District Court
For the Eastern District of Virginia**

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**REPLY BRIEF FOR THE APPELLANTS TO THE
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PRELIMINARY STATEMENT

The Brief for the United States as Amicus Curiae, filed January 20, 1965, recognizes that the argument of the Appellees and the holding of the court below are clearly erroneous insofar as they seek to declare the Statutes Involved invalid as to Presidential elections on the basis of Article I, § 2, and the Seventeenth Amendment to the Constitution of the United States. With respect to Congressional elections, the Amicus Brief simply deplores the fact that all of the arguments presented by both parties, and the opinion of the court below, deal with the basic issue of what constitutes a *qualification* for federal electors within the meaning of Article I, § 2, and the Seventeenth Amendment. This

issue, says the Government, is so basic and so far-reaching that it should be ignored by this Court. (Amicus Brief, p. 7).

Instead this Court is urged to declare the Statutes Involved invalid on the basis of the Twenty-fourth Amendment alone. This approach not only creates an entirely new issue in these cases, but also advocates an extension of the prohibition of the Twenty-fourth Amendment to a degree never contemplated by its framers.

Accordingly, the Appellants are compelled to answer fully the arguments contained in the Amicus Brief.

ARGUMENT

The Statutes Involved Do Not Violate the Twenty-fourth Amendment

A. THE NATURE OF THE GOVERNMENT'S ARGUMENT AND ITS EFFECT UPON VIRGINIA'S ELECTION LAWS.

The argument of the United States, as the Appellants understand it, is essentially to the effect that Virginia, because of the ratification of the Twenty-fourth Amendment, is now powerless to deal in any manner with any of the practical problems arising out of the impact of the Amendment upon her election laws—because any attempt, no matter how reasonable or necessary, to cope with such problems, is ipso facto a “penalty,” an “onerous procedural requirement,” or “a device which effectively subverts” the Twenty-fourth Amendment. This construction of the Amendment, the Appellants submit, is not supportable in law, in logic or in the record.

As the Appellants have previously noted (Brief for the Appellants, pages 3-4), the Twenty-fourth Amendment gave rise to serious procedural and practical problems in Virginia. One such problem, and Virginia's approach to it,

form the crux of the issue presently before the Court. This problem, of course, was finding some simple means by which those exempt from payment of the poll tax could declare their continuing state and local residence, which is required for voting in all elections. Voluntary poll tax payment, which had since 1902 been the traditional means of proving residence, could no longer be required of any voter in federal elections after ratification of the Twenty-fourth Amendment; likewise substantial numbers of Virginia voters in the armed services were exempt during their period of service from all poll tax payments by virtue of Article XVII of the Constitution of Virginia, adopted in 1945 and amended in 1960. Virginia's approach to the problem of providing all exempt voters who choose to rely upon their exemptions with an alternate method of proving residence is found in *Va. Code* § 24-17.2, which provides for the certificate of residence.

It is unfortunate, but understandable, that the Government has joined the lower court and the Appellees in denying the legislative history of the Statutes Involved (R. 76-77, 85, 97) which is the only evidence in the record as to the probative value of poll tax payment in Virginia. Amicus Brief, page 13 and note 11.¹

¹ The Government's denial is particularly remarkable in view of the reliance it places in its Brief in several instances upon the testimony of a delegation of Virginians speaking in opposition to the amendment to S. J. Res. 29, 87th Cong., 2d Sess. (1962), which eventually became the Twenty-fourth Amendment. *Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 87th Cong., 2d Sess., ser. 25 (1962) (hereinafter cited as "*Hearings*") at 73-102. Judge William Old, a member of that delegation, stated, *id.* at 81:

The poll tax payment required in Virginia . . . enables Virginia to avoid the burdensome necessity for annual registration. The simplicity of this system is very apparent. Once having registered at his precinct the voter is permanently qualified to vote provided he has paid either personally or by mail, his poll tax assessment of \$1.50 to the county or city treasurer of the subdivision wherein he resides. If he moves from one precinct to another or from one

The Appellants have already shown that even if the record needed independent substantiation, it may be found in quantity both in the law generally and particularly in the law of Virginia relating to assessment with and payment of poll taxes. See Brief for the Appellants, pages 17-24. This argument need not be repeated here.

But according to the Government, the Twenty-fourth Amendment means that Virginia is without power to provide any substitute method of proving residence, whether or not it is reasonable, because "no 'equivalent,' or milder 'substitute' [for any of the aspects of poll tax payment] is permissible" thereunder, and every such substitute method

political subdivision to another he simply requests a transfer of registration to his new precinct. The local treasurer prints a list of all persons paying the poll tax which is placed in the hands of the election officials at each precinct. *The assessment and payment of poll taxes constitutes proof of residence and citizenship.* We in Virginia would be reluctant to give up this simplified system, which has kept us remarkably free from all taints of election frauds. . . . (Emphasis added).

Likewise, Attorney General Button testified, *id.* at 99:

In States that have neither poll taxes nor yearly registration requirements, the problem is evident: a citizen may register in one locality, then move to another locality and register again. He could vote in each locality, unless the State employed a vast number of investigators to determine the continuing legality of each voter's registration.

In Virginia the problem is largely solved by the poll tax. A man votes where he pays his poll tax. If he moves from one locality to another, he simply transfers his registration, pays his poll tax in the new locality, and votes. Since he would not have paid the poll tax in the locality of his former residence, he could not vote there. No doubt there is some possibility for error in the system, but it is a simple and effective system. The citizens of Virginia are satisfied with it and believe it to be the best available system.

This testimony, reference to which is so conveniently omitted by the United States when it undertakes to deny the record in these cases, certainly does not contradict the legislative history of the Statutes Involved but obviously supports it in every particular.

is an "abridgment" prohibited by the Amendment. Amicus Brief, pages 9, 11.

Following the Government's argument to its logical end, the Twenty-fourth Amendment means that any reasonable requirement enacted to fill the evidentiary void left by abolition of the poll tax is unconstitutional as applied to the federal voter.

Thus, if Virginia should by amendment of her own Constitution, do away entirely with the poll tax requirement, but should simultaneously enact either a statute requiring every voter to reaffirm his residence annually by filing a certificate, or a statute requiring that non-voters be struck from the registration rolls (either of which would be a necessity if the system of permanent registration were not jettisoned at the same time), either statutory requirement in the Government's view would be unconstitutional as applied to the federal voter since it would perform, in lieu of poll tax payment, the residence-proving function previously performed by such payment. Or suppose that by such constitutional amendment Virginia should do away with the residence qualification, but should instead add a property ownership qualification applicable to all voters.² The Government would again say that the Twenty-fourth Amendment is violated, since the federal voter's ownership of property would serve as evidence of residence within the

² Property ownership qualifications were common during the 18th and early 19th centuries, but have since largely been discarded by the states. Presumably such qualifications may still be applied to all voters by amendment of a state constitution. Senator Spessard Holland, the chief proponent of the Twenty-fourth Amendment, originally proposed that S. J. Res. 29 be amended by substitution of the language of S. J. Res. 58, 87th Cong., 1st Sess. (1961), which contained a provision abolishing such qualifications. See 108 Cong. Rec. 4185 (1962) (Senator Holland); *id.* at 4575 (Senator Johnston, quoting text of first proposed amendment). But the amendment actually offered by him (which became the Twenty-fourth Amendment) eliminated this provision. 108 Cong. Rec. 5042-43, 5074 (1962).

state and community, would thus be in lieu of poll tax payment, and therefore unlawful. Or suppose Virginia, under the pressure of the Twenty-fourth Amendment, should do away with both the poll tax requirement and the permanent registration system, and should instead enact a constitutional amendment providing for an annual registration of voters. Since poll tax payment presently functions effectively as an annual registration, would this, too, be attacked as a poll tax "substitute"? Other examples of the absurd and impractical results that would ensue from adoption of the inflexible doctrine contended for by the Government may be imagined, but those cited above should suffice to show why it should be rejected.

B. THE EFFECT OF THE GOVERNMENT'S ARGUMENT UPON THE ELECTION LAWS OF OTHER STATES.

The Government's doctrine would have drastic effects upon the election laws of at least two other states in which poll tax payment has had the same dual function it has had in Virginia. Neither Arkansas nor Texas, prior to 1963, had any voter registration laws whatever. As Senator Tower remarked during the debates on the Senate Joint Resolution which eventually became the Twenty-fourth Amendment, payment of poll taxes in Texas traditionally served as evidence of residence, 108 Cong. Rec. 4658-59 (1962); and in both states, the list of poll tax payers served as a registration list. *Hearings before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary*, 87th Cong., 1st Sess., pt. 5, at 1000, 1050 (1962); see also 108 Cong. Rec. 4883-88, 4893 (1962) (remarks of Senator McClellan). When ratification of the Twenty-fourth Amendment became imminent, both states, recognizing the necessity for meeting the obvious problems presented by it, responded similarly.

The Arkansas legislature, shortly after the Amendment was ratified, enacted a statute abolishing poll tax payment as a voter qualification in all elections and simultaneously establishing an annual voter registration law applicable to voters in all elections. Ark. Acts 1963 1st Ex. Sess., Act 19.³ This statute was held to violate the Arkansas constitution insofar as it purported to abolish poll tax payment as a voter qualification for state elections, but was upheld in all other respects in *Faubus v. Miles*, 377 S.W. 2d 601 (Ark. 1964):

Likewise, in 1963, the Texas legislature submitted to the citizens of Texas an amendment to the Texas Constitution abolishing poll tax payment as a voter qualification in all elections. Tex. Acts 1963, S.J.R. 1, at 1797. At the same time, it enacted an annual voter registration law the effectiveness of which was contingent upon approval of the state constitutional amendment in a popular referendum, and a law requiring nonpayers of the poll tax in federal elections to obtain annually a poll tax receipt marked "poll taxes not paid," the effectiveness of which was contingent upon rejection of the Texas constitutional amendment and ratification of the Twenty-fourth Amendment to the U. S. Constitution. Tex. Acts 1963, ch. 430, at 1103. The Texas voters rejected the proposed amendment to the Texas Constitution; the Twenty-fourth Amendment was ratified. Thus, the second contingent law referred to above is presently in effect. *Tex. Election Code*, Art. 5.02a (Supp. 1964).⁴

³ The preamble to this Act reads in part:

... [I]t is the consensus of the General Assembly that the adoption of Amendment No. 24 to the Constitution of the United States makes it necessary to establish a system of voter registration in this State.

⁴ The Texas statute is to be distinguished from the Mississippi statute held unconstitutional in *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964). Both statutes, it is true, require a voter exempted from poll tax payment by the Twenty-fourth Amendment to obtain a

The result of events in Arkansas and Texas is that the prospective voter in federal elections who does not pay his poll taxes must register in Arkansas and obtain a specially marked poll tax receipt in Texas. The requirements of both states are manifestly in lieu of poll tax payment in federal elections. But such requirements are also needed to prevent election frauds, for without them, there will be no objective evidence at all—not even the appearance of the prospective voter's name on an outdated registration list—from which election officers can determine whether or not such voter is a qualified resident. Yet the Government would presumably argue, as it presently argues against the Statutes Involved, that the requirements are invalid under the Twenty-fourth Amendment merely because they are substitutes for the poll tax, notwithstanding that they are justifiable by a necessity and calculated reasonably to cope with it.

C. THE GOVERNMENT'S ARGUMENT DISTORTS THE OBVIOUS INTENT OF THE TWENTY-FOURTH AMENDMENT.

The elementary principles of construction of the Twenty-fourth Amendment are clear. "[T]he intention of the Congress which framed and of the States which adopted this Amendment of the Constitution must be sought in the words of the Amendment." *United States v. Wong Kim Ark*, 169

distinctively marked poll tax receipt. But the Texas Election Code requires voters exempted by state law to obtain an exemption certificate substantially identical to the poll tax receipt for every election in which they may seek to vote, see *Tex. Election Code*, Art. 5.16 (1952), whereas in Mississippi, as the *Gray* court took care to point out, a voter exempted by state law needed only to obtain an exemption certificate once, and the certificate would suffice for all elections held thereafter. This is a critical distinction, for it shows that the Texas statute does not belie its purpose—all exempted voters must prove their qualifications, no matter from what law they may derive their exemption.

U.S. 649, 699 (1898). "[I]n the construction of the language of the Constitution . . . we are to place ourselves as nearly as possible in the condition of the men who framed that instrument." *Ex parte Bain*, 121 U.S. 1, 12 (1887).

The language of the Twenty-fourth Amendment shows that its single, explicit purpose was to eliminate payment of a poll tax or other tax as a direct condition of the right to vote in federal elections. Surely, if Congress had intended the Twenty-fourth Amendment to have the drastic effect attributed to it by the Government, it would have said so explicitly. But a fair reading of the legislative history of the Twenty-fourth Amendment fails to reveal anywhere that the Amendment was intended to render the states in which payment of the poll tax performed an essential residence-proving function impotent to provide a means of proving residence when poll tax payment could no longer be used as such. Rather, it shows that the concern of the proponents of the Amendment was solely with the tax as a tax, and all of the official references to "substitutes," when read in full context, are clearly references to substitute *taxes*.⁵

⁵ *E.g.*, H. R. Rep. No. 1821, 87th Cong., 2d Sess. 5 (1962):

The limitation proposed by this section . . . would also prevent both the United States and any State from setting up any substitute *tax* in lieu of a poll tax as a prerequisite for voting in primary elections for those specified Federal officials. This prevents nullification of the amendment's effect by a resort to subterfuge in the form of *other types of taxes*. (Emphasis added).

See also *Hearings, supra*, at 25 (statement of Senator Holland relating to anti-poll tax provisions of S.J. Res. 58 identical to those of amended S.J. Res. 29, which became the Twenty-fourth Amendment):

Fourth, the proposed amendment would prohibit any *tax* other than the ordinary poll tax as we know it from being prescribed as a prerequisite for voting for elective Federal officials. (Emphasis added).

The same singleness of Congressional purpose was also characteristic of the Fifteenth Amendment, from which the form and language

To be sure, the Appellants do not suggest that a substitute of any nature whatever other than a tax is permissible under the Amendment; *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964), is answer enough to contentions of this kind. What the Appellants do suggest, however, is that this Court should repudiate the draconian interpretation of the Twenty-fourth Amendment urged in the Government's Amicus Brief, the harsh and unworkable consequences of which have previously been illustrated, and should instead adopt an interpretation more consistent with reason and practicality. Where, as here, the Twenty-fourth Amendment has made it impossible for a state to continue to employ the fact of poll tax payment in all cases as a means of proving continuing residence, and some means of proof is a practical

of the Nineteenth and Twenty-fourth Amendments were derived. Many members of the Reconstruction Congress felt that the Amendment was faulty in this respect, and that an amendment establishing a uniform national standard ought to have been submitted to the states in its stead. *E.g.*, Cong. Globe, 40th Cong., 3d Sess., at 862 (1869) (remarks of Senator Warner). But this more extreme approach was rejected. See 2 *Story, Constitution* § 1972 (4th ed. Cooley 1873).

To emphasize the clear intent of the framers of the Twenty-fourth Amendment to limit its prohibition to *taxes only*, the language of the prohibition itself makes it obvious that failure to pay tax must itself deny, cut-off or deprive one of the right to vote before it is proscribed.

The phrase "denied or abridged" occurs in the Fifteenth, Nineteenth and Twenty-fourth Amendments, in each case referring to the same subject, i.e., the right to vote. The words "abridge," "abridging" or "abridged" also occur in the First and Fourteenth Amendments. When read in this constitutional context, the word "abridge" clearly means to "cut off," "curtail" or "deprive of" (see Webster's New International Dictionary, 2d Edition). This usage is preferable to "circumscribe or burden," which was the inexact definition concocted by the three-judge court in *Gray v. Johnson*, *supra*, 234 F. Supp. at 746, cited in note 8, pp. 9-10 of the Amicus Brief.

But, in any case, it is the failure to pay a *poll tax or other tax*—and nothing else—that is prohibited by the Twenty-fourth Amendment when it denies, abridges, cuts-off or curtails the right to vote.

necessity to its system of election law administration, the state should be permitted to establish a substitute means of proof, so long as the substitute chosen is neither extrinsically or intrinsically unreasonable.

D. AUTHORITIES DO NOT SUPPORT THE GOVERNMENT'S ARGUMENT.

None of the cases cited by the Government precludes this Court from adopting the view suggested by the Appellants. *Frost & Frost Trucking Co. v. Railroad Comm'n*, 271 U.S. 582 (1926) and *Terral v. Burke Constr. Co.*, 257 U.S. 529 (1922), are cited to show that it is a "familiar principle" that the states are utterly powerless to condition the granting of a privilege upon the "waiver" of a constitutional right. Although factually both cases are distinguishable,⁶ the Appellants must admit that there is some language in *Frost* that might conceivably support the principle argued by the Government. But if the language in *Frost* is to be taken as stating an absolute, it is difficult, if not impossible, to reconcile such language with the holdings of such cases as *Hess v. Pawloski*, 274 U.S. 352 (1927), and *Kane v. New Jersey*, 242 U.S. 160 (1916), to the effect that a state may validly require a non-resident motorist to surrender his constitutional right to personal service of process in *in personam* actions as a condition of the privilege of using its streets and highways. Moreover, as Mr. Justice Frankfurter

⁶ In *Frost*, this Court, Holmes, Brandeis and McReynolds, JJ., dissenting, struck down a California statute requiring private carriers, as a condition of using the state's highways, to submit to regulation as public service corporations. In *Terral*, an Arkansas statute requiring foreign corporations, as a condition of qualifying to do business in the state, to forego their rights to resort to federal courts was likewise annulled.

observed in *Watson v. Employers Liab. Assur. Corp.*, 348 U.S. 66, 82 & n. 3 (1954) (Frankfurter, J., concurring), the "survival value" of *Frost* is limited in view of *Stephenson v. Binford*, 287 U.S. 251 (1932), which upheld a statute substantially identical to that invalidated in *Frost*; and in addition, the *Frost* opinion took no account of *Phoenix Oil Corp. v. Phoenix Ref. Co.*, 259 U.S. 125 (1922), in which subjection to a common carrier's duties was upheld as a condition of a foreign corporation's entry into the state.

Finally it is to be noted that in this Court's last term, where *Frost* was cited in support of the proposition that Congress could not condition the conduct of an interstate railroad business by a state upon the state's surrender of its constitutional immunity from suit by its own citizens, *Frost* was distinguished on the ground that "the condition [there] sought to be imposed was deemed by the Court to fall outside the scope of valid regulation." *Parden v. Terminal Ry.*, 377 U.S. 184, 193-94 n. 11 (1964). *Frost* thus interpreted is fully consonant with the view the Appellants urge this Court to take of the Twenty-fourth Amendment apropos of the Statutes Involved. Here, the only "condition" Virginia seeks to impose upon the right to vote of persons who do not pay their poll taxes is that they declare their residence qualifications—qualifications which their non-payment of such taxes leaves in doubt but which they have long been required to meet for all elections. Both residence qualifications, see *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 51 (1959), and requirements that some persons prove their residence qualifications, see *Pope v. Williams*, 193 U.S. 621 (1904), have been declared to be "conditions" that are within the power of the states to impose.

More closely in point, although likewise not in the least inconsistent with the Appellants' contentions, is *Lane v.*

Wilson, 307 U.S. 268, (1939), also cited by the Government. To understand *Lane*, reference must be made to *Guinn v. United States*, 238 U.S. 347 (1915). In *Guinn*, this Court held that an Oklahoma statute, which commenced by requiring all voters to be able to read and write, but ended by exempting from the literacy test thus imposed all lineal descendants of persons qualified to vote on January 1, 1866, violated the Fifteenth Amendment. Promptly after the *Guinn* decision, Oklahoma proceeded to amend its election laws so as to require everyone to register, except all persons who voted in the 1914 elections, which were held while the statute invalidated in *Guinn* was still in effect. The subsequent statute was likewise held to violate the Fifteenth Amendment in *Lane*.

In both *Guinn* and *Lane*, the unreasonable nature of the subterfuge was apparent. The *Guinn* statute had the effect of automatically requiring all Negroes to pass the literacy test, but at the same time exempting even the most illiterate whites. The *Lane* statute continued the evil of the *Guinn* statute by making static its discriminatory effect. Both of these cases are distinguishable from the instant cases, however, for unlike his payment of a poll tax, a voter's race can have no bearing whatever upon his satisfaction of any other elector qualifications, and it is thus impossible to find any justification in fact for a substitute for race, outlawed in all elections as a condition of voting by the Fifteenth Amendment.

Furthermore, it is to be noted that the statutes in question in the *Lane* and *Guinn* cases were both intrinsically unreasonable. If the object of the statute involved in *Guinn* was to insure that all voters could read and write, there was absolutely no foundation or explanation at all (other than prohibited racial discrimination) for the exemption of de-

scendants of persons qualified to vote on January 1, 1866; that is, white persons to the absolute exclusion of Negroes, for such descendants could well be illiterate. If in *Lane* the object of registration was to insure that all voters possessed the then required elector qualifications, there was likewise no foundation or explanation for the exemption of persons who had voted in the elections held in 1914 (except to freeze the discrimination practiced under the statute invalidated in *Guinn*), for such persons could well have become unqualified since that date. Both statutes were thus intrinsically unreasonable, even without reference to the racial discrimination they were manifestly intended to promote or preserve.

But the Statutes Involved in the present cases contain no such self-defeating exemptions, and it is this quality—their lack of intrinsic unreasonableness—that finally distinguishes them from the statute invalidated in *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964), which the Government has made the keystone of its argument. In the *Gray* case, the court held to be a violation of the Twenty-fourth Amendment a Mississippi statute which required voters who were exempt from the state poll tax requirement by virtue of the Amendment to obtain and present in each election in which they sought to vote poll tax receipts stamped "Poll Taxes Not Paid." The claimed justification for the statute was that the information contained in the receipts was necessary to enable election officials to determine whether a person offering to vote without paying his poll taxes was otherwise qualified under Mississippi law. But as the court pointed out, other persons exempted by state law from poll tax payment were required only to obtain a permanent certificate of exemption, which would suffice for all elections thereafter. The challenged statute thus belied its ostensible purpose,

since persons exempted by state law were at least as likely to become unqualified as persons exempted by federal law, yet only the latter were required to supply in each election the information asserted to be a necessity by the state. The statute was thus intrinsically unreasonable; it could not be justified or explained except as a deliberate hindrance to the federal voter seeking to exercise his Twenty-fourth Amendment rights, and it was therefore held unconstitutional.

It is in this crucial respect that the Mississippi statute differs from the Statutes Involved in these cases. There are no self-defeating exceptions in the present Statutes, for voters exempted under either state or federal law from payment of poll taxes must file the certificate in order to prove their continuing satisfaction of Virginia's residence requirements.

Thus, the cases cited by the Government leave this Court perfectly free to adopt an interpretation of the Twenty-fourth Amendment which the Appellants believe is most consistent with reason and practicality. To reiterate, this interpretation is that a necessary substitute for the evidentiary function of poll tax payment should be struck down under the Twenty-fourth Amendment only if it is intrinsically unreasonable; that is, self-defeating by its own terms and thus inexplicable except as a barrier to the federal voter, or extrinsically unreasonable; that is, so oppressively burdensome as to be similarly inexplicable except as such a barrier. The Appellants have already shown Virginia's need for the certificate of residence provided for in the Statutes Involved; and they have also shown that the requirement that the certificate be filed by nonpayers of the poll tax can by no means be called a self-defeating measure. It remains only to be shown that the certificate requirement does not impose an unreasonable burden upon those voters who may choose to prove their residence by filing it.

**E. THE STATUTES INVOLVED DO NOT CREATE AN
UNREASONABLE BURDEN ON THOSE WHO DO
NOT PAY POLL TAXES.**

The Appellants take serious exception to the Government's unsupported assertion (Amicus Brief, pages 12-13) that they "do not deny that the new residence certificate alternatively required of federal electors amounts to a substantial requirement." If by "substantial requirement" the Government means a substantive, as distinguished from a procedural requirement, then the assertion contradicts the position taken by the Appellants from the date these cases were instituted in the court below. For if the certificate were such a substantive requirement, it would be an elector "qualification" invalid under the Virginia Constitution; and it has always been the Appellants' view that the certificate is not a "qualification" of any kind. If by "substantial requirement" the Government means that the certificate is an unreasonable, oppressive and cumbersome method of proving residence, the effect of which is to force all prospective voters into proving residence by paying their poll taxes, the Appellants now deny it and will proceed to demonstrate that the contrary is in fact the case.

The Government's argument that obtaining, completing and filing the certificate of residence would be as a practical matter an unreasonable, oppressive and "cumbersome" procedure rings hollow when Virginia's experience under her laws applicable to absent voters (*Va. Code Tit. 24, ch. 13*) and to voters absent in the armed services (*Va. Code Tit. 24, ch. 13.1*) is taken into consideration. Both classes of voters must "take the initiative" in order to obtain their official ballots. Official application forms for absentee ballots are

distributed to the local registrars, see *Va. Code* § 24-320, and it is up to absent voters to obtain such forms, see *Va. Code* §§ 24-321, -322, to complete them in the manner provided in *Va. Code* § 24-324 (which requires a witnessed statement by the absentee voter), and, when absentee ballots are received by them pursuant to their filing of such applications, to have their casting of such ballots notarized as required by *Va. Code* §§ 24-333, -334 and to vouch and have notarized as well their own compliance with the applicable provisions of the law, see *Va. Code* § 24-332, -334. Similarly, voters absent in the armed services must apply themselves for their official ballots, stating minimally the information required by *Va. Code* § 24-345.5, and, upon casting their ballots, they must complete the certificate provided for in *Va. Code* § 24-345.7 (which served as a model for the certificate of residence presently being challenged) and must swear before a commissioned officer to the veracity of the statements contained therein. The procedures applicable to the exercise of the franchise by absent voters and voters absent in the armed services are to be contrasted with the procedures applicable to the nonpayer of poll taxes, which are elementally simple in comparison. Yet Virginia's experience for many years under the absent voter and absent serviceman voter laws has been that the "cumbersome" procedures established thereby have not deterred any qualified elector from casting his ballot. Actually, as is self-evident upon any unbiased reading of the Statutes Involved, the certificate of residence is at once the simplest and most comprehensive substitute method of proving residence that could have been devised.

The Government also appears to argue that completing the official certificate form printed for dissemination to local

election officers (a specimen is filed as Def. Ex. 35) pursuant to *Va. Code* § 24-28.1 (R. 10-11) is the only acceptable means of complying with the certificate requirement. Amicus Brief, pages 11-12. This is plainly not so. All that is necessary is that the prospective voter file a certificate "substantially" in the statutory form. Thus, the voter may type or write out his own certificate and it will be accepted, so long as it contains the essential information and complies with the statute in other respects. He need never apply for an official form at all.⁷

The Government also asserts that the six months' cut-off date for filing of the certificate (also applicable to poll tax payment) constitutes an unjustifiable and "most serious obstacle" to the non-payer of poll taxes. The Appellants submit that this assertion reflects a regrettable lack of understanding of the Virginia election laws.

Primary elections in Virginia are held in July, four months before the November general elections. *Va. Code* § 24-349(a). But to be eligible to vote in the primaries, voters must be eligible to vote in the general elections for which the primaries are held. See *Va. Code* § 24-367. Thus, in order to vote in July, a voter must possess as of the date of the November elections the residence qualifications contained in Section 18 of the Constitution of Virginia. It would

⁷ It is to be noted that this is another factor distinguishing the Statutes Involved from the Mississippi statute held unconstitutional in *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964), discussed previously. As the court pointed out, *id.* at 746, the Mississippi statute provided that the specially marked poll tax receipts, which had to be obtained by federal exemptees ostensibly to supply the state with necessary information, could be obtained only from local sheriffs—whose disinclination to collect qualifying poll taxes from certain classes of prospective voters had previously been the subject of judicial inquiry. See *United States v. Dogan*, 314 F. 2d 767 (5th Cir. 1963).

therefore plainly be an exercise in futility insofar as the primary election is concerned to require proof in November that such qualifications exist. Thus, the cut-off date for the submission of proof of residence, to make such proof of any use at all in the primaries, had to be positioned at least four months prior to the November elections. But in addition, some time had to be allotted for compiling, posting at the voting places and correcting the lists of persons who had proved their residence before such lists could be employed in the primaries. This time is allotted in *Va. Code* §§ 24-120 (compilation in May); 24-121 and 24-123 (posting and correction in June) (R. 13, 14-15).

The effect of these statutory provisions has been that substantially the same electorate that nominated the candidates by primary in July is eligible to vote for such candidates in the general elections held in November. It is thus apparent that, far from being a device intended by the "poll tax regime" to inveigle prospective voters into sleeping on their rights, the cut-off date, which the Government holds to be such a dreadful iniquity, is reasonably necessary in order to make the requirement of proof of residence have any practical utility for primary elections held in July, which, as this Court has repeatedly observed, are frequently as important as the general elections held in November. *E.g., United States v. Classic*, 313 U.S. 299, 319 (1941). The political campaigns which may and usually do determine the outcome of the November general elections are thus not dormant, as the Government argues, at the time of the deadline for filing proof of residence; on the contrary, they are then most active. Prospective voters who are "eliminated" by the deadline are accordingly not "eliminated" by a surreptitious statute, but by their own disinterest or apathy, to which no

reasonable election law may cater. And the implications found in the Amicus Brief that the entire election laws of Virginia constitute some sort of unreasonable scheme to restrict voting are entirely unwarranted and unsupported by any facts.

CONCLUSION

In conclusion, the Appellants would point out to this Court that these cases are the first to arise under the Twenty-fourth Amendment. It is a cardinal principle of construction that if any interpretation can save a statute, that interpretation must be adopted. Yet the Government seeks an interpretation designed to destroy, rather than to save. The Government has invited this Court to make its initial interpretation of the Amendment a dogmatic and inflexible rule that would effectively deprive the few states in which the poll tax has had a practical, evidentiary function in addition to its function as a voter qualification from ever devising any substitute for the former function, no matter how objectively reasonable or necessary the substitute may be. The Government's proposed interpretation, we submit, would have exceedingly harsh and impractical results in that it would strip the affected states of a power which, so far as the legislative history of the Twenty-fourth Amendment discloses, they were not intended to be deprived of. Also, this interpretation is not compelled by any prior decisions of this or any other Court. Therefore, this Court should hold that if a state's substitute for the poll tax is reasonably necessary to the proper working of its election laws, and the substitute is not intrinsically or extrinsically unreasonable, then such substitute is not unlawful under the Twenty-fourth Amendment. As the Statutes Involved clearly are within the class of state

activity which ought thus to be permitted under the Amendment, being necessary and neither self-defeating nor unreasonably burdensome, they should be sustained by this Court.

Respectfully submitted,

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PROOF OF SERVICE

I, Richard N. Harris, one of the attorneys for the Appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17th day of February, 1965, I served copies of the foregoing Reply Brief for the Appellants to the Brief for the United States as Amicus Curiae on the several Appellees hereto and on the United States by mailing same in duly addressed envelopes, with first-class postage prepaid to the respective attorneys of record for the Appellees and the attorneys for the United States as follows: H. E. Widener, Jr., Esq., Widener & Widener, Attorneys at Law, Reynolds Arcade Building, Bristol, Virginia; L. S. Parsons, Jr., Esq., Parsons & Powers, Attorneys at Law, Maritime Tower, Norfolk, Virginia, counsel of record for the Appellees; Honorable Archibald Cox, Solicitor General of the United States, Washington, D.C.; Honorable Burke Marshall, Assistant Attorney General of the United States, Department of Justice, Washington, D.C.; Honorable Louis F. Claiborne, Assistant Attorney General, Department of Justice, Washington, D. C., counsel for the United States.

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